रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. No. D. L. (N) 04/0007/2003—05

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सं. 45] नई दिल्ली, नवम्बर 11—नवम्बर 17, 2018, शनिवार/कार्तिक 20—कार्तिक 26, 1940
No. 45] NEW DELHI, NOVEMBER 11—NOVEMBER 17, 2018, SATURDAY/KARTIKA 20— KARTIKA 26, 1940

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

विदेश मंत्रालय
(सी.पी.वी. प्रभाग)

नई दिल्ली, 24 अक्तूबर, 2018

का.आ. 1621.— राजनयिक और कोंसुलीय अधिकारी (शपथ एवं फीस) के अधिनियम, 1948 (1948 का 41) की धारा 2 के खंड (क) के अनुसरण में वैधानिक आदेश।

एतद् द्वारा, केंद्र सरकार भारत के कोंसुलवास, मिलान, में :

(1) श्री हेमंत कुमार, निजी सहायक,

(2) श्री राकेश शर्मा, सहायक अनुभाग अधिकारी

(3) श्री दिग्विजय सिंह परमार, सहायक पब्लिक वेलफ़ेयर ऑफिसर को दिनांक 24 अक्तूबर 2018 से सहायक कोंसुलर अधिकारीयों के तौर पर कोंसुलर सेवाओं के निर्वहन के लिए प्राधिकृत करती है।

[सं. टी.4330/7/2016]

प्रकाश चन्द, निदेशक (कोंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV DIVISION)

New Delhi, the 24th October, 2018

S.O. 1621.— Statutory Order: In pursuance of clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby appoints :

(1) Shri Hemant Kumar, Personal Assistant,

(2) Shri Rakesh Sharma, Assistant Section Officer, ***and***

(3) Shri Digvijay Singh Parmar, Assistant Public Welfare Officer as Assistant Consular Officers in the Consulate General of India, Milan to perform Consular services with effect from 24 October, 2018.

[No.T.4330/01/2016]

PRAKASH CHAND, Director (Consular)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 6 नवम्बर, 2018

का. आ. 1622.—केन्द्र सरकार एतदद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम संख्या 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए तेलंगाना राज्य सरकार, की जी.ओ.एम संख्या 105, गृह (विशेष) विभाग, दिनांक 31.08.2017 के माध्यम से प्राप्त सहमति से जयनाथ पुलिस स्टेशन, जिला अदिलाबाद में भारतीय दंड संहिता 1860 (1860 का अधिनियम संख्या 45) की धारा 409, 420 तथा आवश्यक वस्तु अधिनियम,1955 की धारा 7 के अंतर्गत, दर्ज अपराध संख्या 89/2015 के संबंध में दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और क्षेत्राधिकार का विस्तार समस्त तेलंगाना राज्य में करती है ।

[फा. सं. 228/42/2015-एवीडी.II]

एस.पी.आर. त्रिपाठी, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES AND PENSIONS

(Department of Personnel and Training)

New Delhi, the 6th November, 2018

S.O. 1622.—In exercise of the powers conferred by sub section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of State Government of Telangana issued *vide* G.O.Ms. No. 105, Home (Special) Department, Dated 31.08.2017, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment in the whole of the State of Telangana, regarding the case registered in Cr. No. 89/2015 U/s 409, 420 of the Indian Penal Code, 1860 (Act No. 45 of 1860) and Section 7 of the Essential Commodities Act, 1955 of Jainath Police Station, Adilabad District.

[F. No. 228/42/2015- AVD.II]
S.P.R. TRIPATHI, Under Secy.

वाणिज्य एवं उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 15 अक्तूबर, 2018

का.आ. 1623.—केन्द्रीय सरकार, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) नियम, 1964, के नियम 12, के उपनियम (2) के साथ पठित, निर्यात (गुणवत्ता नियंत्रण एंव निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, मैसर्स ईटालैब (गोवा) प्राइवेट लिमिटेड, ईटालैब हाउस, फोन्डेकर बिल्डिंग, कार्मेलाइट मोनेस्टरी के सामने मालभाट, मडगांव, गोवा - 403601, को इस अधिसूचना के राजपत्र में प्रकाशन की तारीख से तीन वर्ष की अवधि के लिए भारत सरकार के वाणिज्य मंत्रालय की शासकीय राजपत्र भाग- II, खंण्ड-3, उप खंण्ड (ii), में दिनांक 20 दिसम्बर, 1965 की अधिसूचना सं. का.आ. 3975 के तहत प्रकाशित अधिसूचना में उपाबद्ध अनुसूचियों में विनिर्दिष्ट खनिज और अयस्क समूह-I, अर्थात्, लौह अयस्क, मैंगनीज अयस्क, फेरोमैंगनीज और बॉक्साइट को निर्यात से पूर्व निम्नलिखित शर्तों के अधीन गोवा पत्तन में उक्त खनिज और अयस्क के निरीक्षण करने के लिए एक अभिकरण के रुप में मान्यता देती है, अर्थात्:—

(i) यह अभिकरण, खनिज और अयस्क समूह-I का निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण की पद्धति की जाँच करने के लिये निर्यात निरीक्षण परिषद् द्वारा नामित अधिकारियों को पर्याप्त सुविधाएं देगी; और

(ii) यह अभिकरण, इस अधिसूचना के अधीन अपने कार्यो के पालन में निदेशक (निरीक्षण और गुणवत्ता नियंत्रण) निर्यात निरीक्षण परिषद द्वारा समय-समय पर लिखित रूप में दिए गए ऐसे निर्देशों से आबद्ध होंगी ।

[फा.सं. के-16014/6/2018-निर्यात निरीक्षण]

संतोष कुमार सारंगी, संयुक्त सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 15th October, 2018

S.O. 1623.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964, the Central Government hereby recognizes M/s Italab (Goa) Private Limited - Goa, Italab House, Fondekar Building, Opposite Carmelite Monastery, Apollo Victor Hospital Road, Malbhat, Margao, Goa - 403601, as an agency for a period of three years with effect from the date of publication of this notification in the official Gazette, for the inspection of Minerals and Ores – Group-I, namely, Manganese Ore, Iron Ore, Ferromanganese and Bauxite specified in the Schedule to the notification of the Government of India in the erstwhile Ministry of Commerce, published vide number S.O. 3975, dated the 20thDecember, 1965, in the Gazette of India, Part II, Section 3, Sub-section (ii), dated the 20thDecember, 1965, prior to export of the said Minerals and Ores at Goa Port, subject to the following conditions, namely: —

(i) the said agency shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to carry out the inspection as specified under rule 4 of the Export of Minerals and Ores - Group I (Inspection) Rules, 1965; and

(ii) the said agency, in the performance of its function as specified in this notification, shall be bound by such directions, as the Director (Inspection and Quality Control), Export Inspection Council, may give in writing from time to time.

[F. No. K-16014/6/2018-Export Inspection]

SANTOSH KUMAR SARANGI, Jt. Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 25 अक्तूबर, 2018

का.आ. 1624.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, रजिस्ट्रार जामिया मिलिया इस्लामिया, नई दिल्ली एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, सं. 1, दिल्ली के पंचाट (संदर्भ संख्या 175/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.10.2018 को प्राप्त हुआ था।

[सं. एल–42012/58/2012–आईआर (डीयू)]

राजेंद्र जोषी, उप निदेषक

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 25th October, 2018

S.O. 1624.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. 175/2012) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the employers in relation to the Registrar, Jamia Milia Islamia, New Delhi and their workman, which was received by the Central Government on 12.10.2018.

[No. L-42012/58/2012– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT NO. 1, KARKARDOOMA COURT COMPLEX, DELHI

ID No. 175/2012

Shri Ashok Kumar,
S/o Shri Sant Ram,
C/o Shri R.K. Pandit, Advocate,
Chamber No.232, Civil Wing, Tis Hazari Court,
Delhi …Workman

Versus

The Registrar,
Jamia Milia Islamia,
Jamia Nagar,
New Delhi 110 025 …Management

AWARD

A reference was received from Ministry of Labour, Government of India vide letter No.L-42012/58/2012-IR(DU) dated 08.11.2012 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (in short the Act) for adjudication, terms of which are as under:

> 'Whether the action of the management of Jamia Milia Islamia, New Delhi in terminating the services of Shri Ashok Kumar, S/o Shri Sant Ram, Safai Karamchari with effect from 10.11.2006 is justified or not? If not, what relief the workman is entitled to and from which date.

2. Brief facts giving rise to the present reference are that Shri Ashok Kumar, claimant herein, was appointed as Safai Karamchari per due process of law by the management on 27.01.1992. Since then he has been performing his duties with the management with no break in service honestly and sincerely. Workman was on medical leave due to illness in 2005, which was duly sanctioned by the management. After availing the said leave, claimant herein returned to report for duty when he was declared to be medically fit vide certificate dated 10.05.2006. Officials of the management have not allowed claimant to resume his duties without any order**.** Workman was told that his file pertains to reinstatement and has been sent to the higher authorities for getting sanction and then only he can be allowed to resume his duties. Unfortunately, management never called the workman thereafter so as to join duties. Workman gave several representations to the higher officials of the management with a request to allow him to resume duties but of no use. He even approached officials of the management as well as office of the Registrar in the month of August 2010 and he was orally intimated that his services have been terminated. Aforesaid termination of services of the workman is in completion violation of principles of natural justice as no show cause notice was served upon the workman nor any domestic enquiry was conducted. Termination even otherwise is in violation of Section 25F, G and H of the Industrial Disputes Act, 1947(in short the Act). Workman had also filed conciliation proceedings before the Conciliation Officer but the attitude of the management was non-cooperative resulting in failure of conciliation.

3. Management filed reply to the statement of claim and took preliminary objections that reference is bad as this Tribunal has no jurisdiction in the matter. The reference is otherwise not maintainable in view of Clause 29 of Jamia Milia Islamia Act, 1988, according to which disputes between answering management and employer have to be resolved by arbitration. Workman has not approached the Tribunal with clean hands nor any demand notice was served on the management by the claimant before filling of the present reference. There is neither valid espousal by the workman nor the matter has been sponsored by substantial number of workmen in the establishment, as such there is no industrial dispute. On merits, management admitted factum of engagement of the workman as safai karamchari with effect from 27.01.1992 as casual worker and later in in pursuance of letter dated 22.04.1998 workman was conferred temporary status. There were complaints against the workman for stealing fan regulators on 24.08.2001 for which he was served memo on 24.08.2001 but no reply was filed by the workman. Thereafter there was continuous absence from duty by the workman without prior information/sanction of leave with effect from 08.06.2005. As such, memo was issued on 01.08.2005 seeking his explanation for his unauthorized absence. It is averred in Para 4 of the reply that the workman filed reply dated 23.09.2005 to the show cause notice alongwith medical certificates regarding his illness and as such he was granted admissible leave of 55 days with effect from 08.06.2005 with warning to follow leave rules, failing which he will render himself for disciplinary action. There was again complaint against the workman regarding his absence without leave from duty with effect from 09.03.2006 and he was issued memo by the management on 11.05.2006. No reply was filed by the workman. Thereafter, legal communication was sent to him on 11.08.2006 in which it was clarified that in the absence of any cogent explanation by the workman for his unauthorized absence, it would be presumed that he is no longer interested in service of the University. In the subsequent memo dated 10.10.2006, workman was asked to show cause as to why his services should not be terminated and he was asked to file reply within 10 days, failing which his services shall be deemed to be terminated. It is further alleged that on 23.11.2006 his services from Jamia Milia Islamia were terminated as per provisions contained in Ordinance 6(VI)(47(ii). Management has denied other averments made in the statement of claim.

4. Against this factual background, this Tribunal on the basis of pleadings of the parties, vide a order dated 06.08.2013 framed the following issues.

(i) Whether dispute has not acquired status of an industrial dispute for want of service of demand notice on the management?

(ii) Whether disputed dispute has not acquired status of industrial dispute for want of espousal by the union or considerable number of workmen in the establishment of the management?

(iii) As in terms of reference

5. Workman, in support of his case examined himself as WW1 and tendered evidence his affidavit, Ex.WW1/A. He has tendered in evidence documents Ex.WW1/1 to Ex.WW1/5. Management, in order to rebut the case of the claimant, examined Shri Syed Abbas Raza Naqvi, whose affidavit is Ex.MW1/A. Shri Naqvi also relied on documents Ex.MW1/1 to Ex.MW1/6.

6. I have heard Shri R.N, Bhargav, A/R for the claimant. None appeared on behalf of the management to advance arguments.

Findings on issue No. (i) and (ii)

10. Both issues No.1 and 2 and being taken up together as they are legal in nature and can be conveniently disposed of. So far as question regarding industrial dispute is concerned, it is clear from perusal of notice Ex.WW1/4 that the workman has served notice on the management of Jamia Milia Islamia through its Registrar wherein request has been made to reinstate the workman with full back wages. There is no reply to the said notice on record. Therefore, by no stretch of reasoning, it can be said that the dispute in the present case is not an industrial dispute. It is clear from the definition of 'industrial dispute' under Section 2(k) of the act that any dispute or difference between a worker and his employer, which is connected with employment of the workman or conditions of his services, falls within the definition of 'industrial dispute'. Management has not brought any evidence on record to suggest that any notice was served on the workman by the management before raising the above dispute through the union. In fact, workman has thereafter approached the Assistant Labour Commissioner through the Union which has also tried to reconcile matter between the parties, but the management has adopted an non-conciliatory approach resulting in failure of conciliation. It was only thereafter reference was received by this Tribunal in terms of sub-section 2 of Section 10 of the Act. No doubt case of the workman is normally espoused through the union of which workman is a member. Expression 'espousal means that now the dispute of the individual workman has been adopted by the union as its own dispute and substantial number of workman gives support to the cause of such dispute raised by the workman. Expression union normally indicates the Union to which the workman belongs even though it may be union of minority workmen. Hon'ble Apex Court in the case of J.H. Yadav vs. M/s Forbes Gokak Ltd (2005 III AD SC61) considered the question of raising of industrial dispute by a union as well as ambit and scope of espousal. In the said case, it was observed that if evidence on record suggest that the cause of the workman has been espoused by the union, either in writing or orally, same is sufficient compliance of the provisions of the Act. Since dispute of the workman herein has been considered by the Conciliation Officer, Ministry of Labour, as such it is apparent that the workman has approached the union first for espousal of the dispute.

11. Question of raising of demand by the workman through union was also considered by the Hon'ble High Court of Delhi in Workmen of MCD vs. South MCD in WP(C) No.13023/2005 decided on 06.08.2007. Claim filed by the workman was dismissed by the Tribunal as workmen had not raised any demand with the management, as such, there was no dispute or difference in the eyes of law when there is no proper and valid demand on behalf of the workman.

Industrial dispute will arise only when such a demand is refused arbitrarily or illegally by the management. Industrial Tribunal held that in the absence of any valid demand and refusal thereof by the management, there is no industrial dispute existing between the parties; as such, no relief was granted. However, when the matter was taken to the Hon'ble High Court, decision of the Tribunal was set aside and heavy reliance was placed on the case of Shambunath Goyal vs. Bank of Baroda (1978 2 SCR 793) wherein it was held as under:

> 'A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the disputes or difference is connected with the employment or non-employment or the terms of employment or, with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute Would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written demand is not a sine ,qua non, unless of course in the case of public utility service, because section 22 forbids going on strike without giving a strike notice. The key words in the definition of industrial dispute are 'dispute' or 'difference'. What is the connotation of these two words. In Beetham v. Trinidad Cement Ltd.(1). Lord Denning while examining the definition of expression 'Trade dispute' in section 2(1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed:
>
> > "by definition a 'trade dispute' exists whenever a 'difference" exists and a difference can exist long before the parties become locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening".

12. It is clear from the ratio of the above judgement that dispute would be deemed to no existent when the matter has been taken to the Conciliation Officer(ALC) and there is no legal requirement under that Act that the dispute is required to be raised in a specific manner so as to term it as an industrial dispute. It can even be orally raised. It is for the Government to decide whether in the absence of proper raising of dispute or insufficient material on record, whether any reference can be sent to the Industrial Adjudicator. Thus, in view of the ratio of the law discussed above, there is no specific requirement under the Act that industrial dispute is to be raised only by making a demand in writing and any such interpretation given Section 2(k) of the Act is not legally permissible.

13. In Ultra Tech Cement Vs. Industrial Tribunal, (2016 LLR 523), legal consequences of non-compliance of provisions of section 2A(2) of the Act was considered with the workman has directly filed claim before the Industrial Tribunal without first filing application before the Conciliation and waiting for expiry of 45 days, as provided under the Act. Management in the said case raised objections of non-maintainability of the reference petition on account of non-compliance of the provisions of Section 2A(2) of the Act. It was held by the High Court such a provision is simply an enabling one and is directory in nature and not mandatory so as to held that reference is not legally maintainable Mere fact that the case has been referred in terms of section 10 of the Act for adjudication of the dispute before this Tribunal itself shows that parties have appeared before the Conciliation Officer and thereafter when no suitable settlement could be arrived at between the parties regarding disposal of the dispute, as such same was referred to this Tribunal.

14. It is pertinent to mention here that in Para 10 of the statement of claim as well as affidavit of the workman, there is mention of conciliation proceedings before the Conciliation Officer (office of the Regional Labour Officer) wherein attitude of the management was alleged non-cooperative and management in Para 10 of the reply though denied the averments made in the statement of claim, yet the management has clarified that it is vehemently denied that conciliation failed due to the management. Rather, claimant wanted to compel the management to act according to his dictates. This shows that there were conciliation proceedings before the Government, as required under the law. In view of the above discussions, it is clear that there was espousal and union has raised demand for redresssal of his grievances. Both issues, No.1 and 2 are decided in favour of the claimant and against the management.

Findings on Issue No. (iii)

7. Issue No.3, which is the main issue in terms of the reference received from the appropriate Government is taken up for the purpose of discussion first. It is neither in doubt nor in dispute that the claimant herein was engaged as safai karamchari by the management on 27.01.1992 and this fact stands duly admitted by the management in Para 1 of the reply filed by the management. It is clearly admitted that he was engaged as casual worker, safai karamchari, and thereafter vide UGC letter dated 22.04.1998/Government of India, Department of Personnel & Training OM No.51016/2/90-Estab.(C) dated 10.09.2003, adopted by Executive Council of the management, workman was conferred temporary status. Workman has also tendered in evidence letter dated 22.04.1998 which deals with grant of temporary status and regularization of casual labour in Central Universities. It is clear that Jamia Milia Islamia is admittedly a Central University and the said letter is fully applicable to casual labour who have worked beyond 89 days. This is clear cut mention in the above letter that whenever vacancies occur, University is required to absorb such employees who have been granted temporary status. Further, as per grant of temporary status regulations scheme, temporary status is to be conferred on casual employees who have worked atleast 240 days (206 days in the cases of offices observing 5 day week). It is also clear from the list of employees attached with the letter that the name of the workman finds mention ad serial No.28 and his date of birth is mentioned as 13.05.1964 and his date of joining as 27.10.1992. Designation of the workmen is mentioned as safaiwala. There is an ID card of the workman issued by Jamia Milia Islamia Ex.WW1/2. Workman has also tendered in evidence is sick leave certificate Ex.WW1/3, which shows that he was advised medical rest from 01.10.2005 to 15.10.2005. Workman has also issued notice Ex.WW1/4 dated 25.09.2010 to the management wherein workman has alleged similar facts as mentioned in statement of claim, alleging the action of the management in terminating him from the job as wrong and illegal.

8. It is clear from resume of evidence discussed above that the workman herein is in the employment of the management since 27.01.2992 and vide letter dated 10.09.1993, he was granted temporary status. He has also filed proof of his medical illness ExWW1/3. Now, the vital question which requires determination is whether termination of the job of the workman herein without an proof of domestic enquiry is legally valid. Admittedly, no show cause notice has been placed on record or proof in accordance with law by the management. There is no proof any domestic enquiry on record against the workman. **Shri Syed Abbas Raza Naqvi, in his cross examination, has admitted that he was not present at the site of the incident nor has be seen any regulator, which the claimant was alleged to have stolen. The claimant was treated on leave without pay for the period 01.10.2005 to 15.10.2005. Further, the management witness has made a vital admission that the claimant was allowed to join duties on 17.10.2005 after issuing a memo.** In such a situation, action of the management in terminating services of the workman can only be termed to be highly arbitrary and illegal and cannot sustain in law.

9. It is further clear from pleadings of the parties that there was relationship of employer and employee between the management and the workman and workman herein falls within the definition of workman as he was admittedly in the employment of the management at the relevant time. In such circumstances, management was also required to serve show cause notice or pay one month's salary in lieu thereof, in terms of Section 25-F of the Act. Since there is no proof of any notice of having been served on the workman before ordering his termination, as such there is no merit in the contention of the management that order of termination must be legally sustained. This is rather unfair labour practice on the part of the management who has sacked the workman completely in violation of principles of natural justice, when records also shows that he has filed medical proof regarding his illness. There is no evidence regarding of regulator of fans by the workman. Hence, it is held that action of the management of Jamia Milia Islamia in terminating services of the workman, Shri Ashok Kumar, on 10.11.2006 to be totally illegal and is not justified in law.

15. As a sequel to the detailed discussion hereinabove, it is held that the order of termination dated 10.11.2006 passed against the workman is held to be wrong and illegal; as such the same is not justified. It is therefore held that the claimant is entitled to be reinstated in service with 50% back wages. An award is, accordingly, passed. It be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : October 8, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 1 नवम्बर, 2018

का.आ. 1625.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, निदेषक, भारतीय प्रौद्योगिकी संस्थान, कानपुर और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कानपुर के पंचाट (संदर्भ संख्या 1/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31.10.2018 को प्राप्त हुआ था।

[सं. एल—42012/79/2012—आईआर (डीयू)]

राजेंद्र जोषी, उप निदेषक

New Delhi, the 1st November, 2018

S.O. 1625.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case CR No. 1/2013) of the Central Government Industrial Tribunal-cum-Labour Court Kanpur as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, Indian Institute of Technology, Kanpur and others and their workman, which was received by the Central Government on 31.10.2018.

[No. L-42012/79/2012– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE SRI RAKESH KUMAR, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOR COURT, KANPUR

I.D. Case No. 1 of 2013

Sri Daman Singh Chauhan,
son of Sri P S Chauhan,
H.No. 154 m Nankari
Kanpur

Versus

1. The Director,
   Indian Institute of Technology,
   Naramau G.T. Road, Kanpur

2. Ramki Infrastructures Ltd.,
   C/o The Director,
   Indian Institute of Technology,
   Naramau G.T. Road,
   Kanpur-208016.

AWARD

1. Central Government, Mol & Employment, New Delhi vide notification No. L-42012/79/2012-IR(DU) dated 17.12.2012, has referred the following dispute to this tribunal for adjudication :

> "Whether the action of the management of M/s Ramky Infrastructures Ltd. In terminating the services of Sri Daman Singh Chauhan son of Sri P S Chauhan workman with effect from 08.07.11 is just fair & legal? If not, what relief the workman concerned is entitled?"

2. The case of the workman in short is that he was employed by opposite party no.1 through opposite party No. 2 on 18.08.2010. Whereas opposite party no.2 is labor supplier, the opposite party no.1 is principal employer. The work and conduct of the workman remained very good and during the course of his employment workman was never issued any charge sheet. It has been further asserted that the employer was paying less wages to the workman than what is prescribed under the provisions of Minimum Wages Act, 1948. When the workman demanded the payment of wages as per provisions of the Act, the employer became annoyed and they terminated the services of the workman w.e.f.08.07.11. The termination of the service of the workman is malafide and unfair by all means.

3. The workman has thus prayed for his reinstatement, with full back wages and continuity of service etc.

4. The claim of the workman has been denied by both the opposite parties vehemently on a number of grounds but considering the contents of settlement filed by the contesting parties, the tribunal does not consider it necessary to detail the averments made by the opposite parties in their respective written statement, since contesting parties have amicably resolved the dispute.

5. After exchange of pleadings and documents between the parties when the case was taken up for hearing on 11.10.18, both the parties have filed a compromise/settlement before this tribunal in the case with the prayer that the case be decided in terms of the settlement. The settlement has duly been signed by both authorized representatives of the parties (petitioner and opposite party No. 2).

6. The terms and condition of the settlement is as under:—

   a) That the worker remained in the employment of establishment of employer during the period 07.04.11 to 07.07.11.

   b) That it is also agreed between the parties that workman will not press LCA Case No. 16/12 and he is agreed to receive a sum of Rs.51000/- as full and final payment.

   c) That the workman before this tribunal has received from M/s Ramki Infrastructures Ltd, Hyderabad a sum of Rs.51000/- through cheque no.022435 dated 11.10.18 drawn on Axis Bank and the workman is ready to relinquish his all legal rights and shall not claim any monetery claim in future and has issued a receipt separately in token of having received the above amount.

   d). That as per settlement the workman will not claim for his reinstatement and legal dues like wages etc from the employer and there will not be any claim against the employer and the LCA case no. 16/2012 is also disposed finally in terms of the compromise.

   e) That the workman assures the employer that he will not raise any claim whatsoever in nature in future as under this settlement the workman has received all legal dues to his full satisfaction payable to him from his employer before the CGIT Kanpur.

   f) That terms of settlement have been signed by the parties without any demur and after understanding the same carefully on 11.10.18.

7. Both the parties have been heard and record has been scanned thoroughly

8. Therefore, keeping in view the prayer of both the parties the reference is decided in terms of settlement holding that the workman is not entitled for any relief.

9. Reference is answered accordingly.

10. Award as above.

Date : 11.10.2018

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 9 नवम्बर, 2018

का.आ. 1626.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, एचएसबीसी इंवेस्ट डायरेक्ट सिक्योरिटीज (इंडिया) प्राइवेट लिमिटेड प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, नं. 1 दिल्ली के पंचाट (संदर्भ संख्या 189/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.11.2018 को प्राप्त हुआ था।

[सं. एल—12012/89/2015—आईआर (बी—1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 9th November, 2018

S.O. 1626.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 189/2015) of the Central Government Industrial Tribunal-cum-Labour Court, No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of HSBC Invest Direct Securities (India) Pvt. Ltd. and their workman, which was received by the Central Government on 09.11.2018.

[No. L-12012/89/2015– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.1: ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 189/2015

Shri Hardeep Singh S/o Shri Kali Ram,
House No. 193, Gali No.08, Rajindra Park Extension,
Nangloi, New Delhi – 110 049 …Workman

Versus

Shri Sanjay Nair, MD & CEO
HSBC Invest Direct Securities (India) Limited,
F-43, South Extension Part I,
New Delhi – 110 049 …Management

AWARD

Central Government, vide letter No.L-12012/89/2015-IR(B-I) dated 26.08.2015, referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the applicant, Shri Hardeep Singh, is entitled to absorption in the newly named company, i.e. HSBC Invest Securities (India) Ltd., by virtue of having worked in the same company under a different name is legal and justified? If not, to what relief is he entitled to?''

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Hardeep Singh, the workman, opted not to file his claim statement with the Tribunal.

3. Further, on receipt of the above reference, notice was also sent to the workman as well as the management. Neither the postal article, referred above, was received back undelivered nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workman. Despite service of the notice, the workman opted to abstain from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. However, it will not debar the claimant, Shri Hardeep Singh, from seeking relief afresh as there is no adjudication of the reference on merits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : October 29, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 09 नवम्बर, 2018

का.आ. 1627.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, एचएसबीसी इंवेस्ट डायरेक्ट सिक्योरिटीज (इंडिया) प्राइवेट लिमिटेड प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण श्रम न्यायालय नं. 1 दिल्ली के पंचाट (संदर्भ संख्या 196/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.11.2018 को प्राप्त हुआ था।

[सं. एल–12012/74/2015–आईआर (बी–1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 9th November, 2018

S.O. 1627.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 196/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of HSBC Invest Direct Securities (India) Pvt. Ltd. and their workman, which was received by the Central Government on 09.11.2018.

[No. L-12012/74/2015– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT No. 1: ROOM No.511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No.196/2015

Shri P. Santosh Kumar,
B-61, 1st Floor, Brij Vihar,
Ghaziabad,
Uttar Pradesh – 201 011 …Workman

Versus

Shri Sanjay Nair, MD & CEO
HSBC Invest Direct Securities (India) Limited,
F-43, South Extension Part I,
New Delhi – 110 049 …Management

AWARD

Central Government, vide letter No.L-12012/74/2015-IR(B-I) dated 02.09.2015, referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the demand of the applicant, Shri P. Santosh Kumar for absorption in the newly named company, i.e. HSBC Invest Securities (India) Ltd., by virtue of having worked in the same company under a different name is legal and justified? If not, to what relief he is entitled to?

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri P. Santosh Kumar, the workman, opted not to file his claim statement with the Tribunal.

3. Further, on receipt of the above reference, notice was also sent to the workman as well as the management. Neither the postal article, referred above, was received back undelivered nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workman. Despite service of the notice, the workman opted to abstain from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. However, it will not debar the claimant, Shri P. Santosh Kumar, from seeking relief afresh as there is no adjudication of the reference on merits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : October 29, 2018

A.C. DOGRA, Presiding Officer

नई दिल्ली, 09 नवम्बर, 2018

का.आ. 1628.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, एचएसबीसी इंवेस्ट डायरेक्ट सिक्योरिटीज (इंडिया) प्राइवेट लिमिटेड प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1 दिल्ली के पंचाट (संदर्भ संख्या 186/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.11.2018 को प्राप्त हुआ था।

[सं. एल—12012/69/2015—आईआर (बी—1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 9th November, 2018

S.O. 1628.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 186/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of HSBC Invest Direct Securities (India) Pvt. Ltd. and their workman, which was received by the Central Government on 09.11.2018.

[No. L-12012/69/2015– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1: ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 186/2015

Shri Kishore K. Negi,
S/o Shri Pooran Singh,
C-352, Beta – 1,
Greater Noida,
Uttar Pradesh – 201 306 …Workman

Versus

HSBC Invest Direct Securities (India) Pvt. Ltd.
Regd. Office: Shiv Building, Plot No.139,
140B, 1st Floor, Western Express Highway,
Sahar Junction, Vile Parle (E),
Mumbai 400 057 …Management

AWARD

Central Government, vide letter No.L-12012/69/2015-IR(B-I) dated 21.08.2015, referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the applicant, Shri Kishore Kumar Negi is entitled to absorption in the newly named company by virtue of having worked in the same company under a different name? If not, to what relief is he entitled to?

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Kishore K. Negi, the workman, opted not to file his claim statement with the Tribunal.

3. Further, on receipt of the above reference, notice was also sent to the workman as well as the management. Neither the postal article, referred above, was received back undelivered nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workman. Despite service of the notice, the workman opted to abstain from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. However, it will not debar the claimant from seeking relief afresh as there is no adjudication of the reference on merits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : October 29, 2018

A.C. DOGRA, Presiding Officer

नई दिल्ली, 09 नवम्बर, 2018

का.आ. 1629.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, एचएसबीसी इंवेस्ट डायरेक्ट सिक्योरिटीज (इंडिया) प्राइवेट लिमिटेड प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण नं. 1 दिल्ली के पंचाट (संदर्भ संख्या 197/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 09.11.2018 को प्राप्त हुआ था।

[सं. एल–12012/75/2015–आईआर (बी–1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 9th November, 2018

S.O. 1629.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 197/2015) of the Central Government Industrial Tribunal-cum-Labour Court No. 1, Delhi as shown in the Annexure, in the industrial dispute between the management of HSBC Invest Direct Securities (India) Pvt. Ltd. and their workman, which was received by the Central Government on 09.11.2018.

[No. L-12012/75/2015– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE PRESIDING OFFICER: CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No. 1: ROOM No. 511, DWARKA COURT COMPLEX, SECTOR 10, DWARKA, DELHI – 110 075

ID No. 197/2015

Shri Raj Bansal S/o Shri Shyam Lal,
B-201, Flat No.B-4 (First Floor),
Duggal Colony, Khanpur,
New Delhi 110 062 …Workman

Versus

Shri Sanjay Nair, MD & CEO
HSBC Invest Direct Securities (India) Limited,
F-43, South Extension Part I,
New Delhi – 110 049 …Management

AWARD

Central Government, vide letter No. L-12012/75/2015-IR(B-I) dated 02.09.2015, referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the demand of the applicant, Shri Raj Bansal for absorption in the newly named company, i.e. HSBC Invest Securities (India) Ltd., by virtue of having worked in the same company under a different name is legal and justified? If not, to what relief he is entitled to?

2. In the reference order, the appropriate Government commanded the party/ies raising the dispute to file statement of claim, complete with relevant documents, list of reliance and witnesses with this Tribunal within 15 days of receipt of the reference order and to forward a copy of such statement of claim to the opposite parties involved in the dispute. Despite directions so given, Shri Raj Bansal, the workman, opted not to file his claim statement with the Tribunal.

3. Further, on receipt of the above reference, notice was also sent to the workman as well as the management. Neither the postal article, referred above, was received back undelivered nor was it observed by the Tribunal that postal services remained affected during the period, referred above. Therefore, every presumption lies in favour of the fact that the above notice was served upon the workman. Despite service of the notice, the workman opted to abstain from the proceedings. No claim statement was filed on his behalf. Thus, it is clear that the workman is not interested in adjudication of the reference on merits.

4. Since the workman has neither put in his appearance nor has he led any evidence so as to prove his cause against the management, as such, this Tribunal is left with no choice, except to pass a 'No Dispute/Claim' award. However, it will not debar the claimant from seeking relief afresh as there is no adjudication of the reference on merits. An award is, accordingly, passed. Let this award be sent to the appropriate Government, as required under Section 17 of the Industrial Disputes Act, 1947, for publication.

Dated : October 29, 2018

A. C. DOGRA, Presiding Officer

नई दिल्ली, 12 नवम्बर, 2018

का.आ. 1630.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य महाप्रबंधक, भारत सरकार संचार निगम लिमिटेड, हैदराबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 51/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8.10.2018 को प्राप्त हुआ था।

[सं. एल—42025/03/2018—आईआर (डीयू)]

राजेंद्र जोषी, उप निदेषक

New Delhi, the 12th November, 2018

S.O. 1630.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (LC No. 51/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Bharat Sanchar Nigam Limited, Hyderabad and others and their workman, which was received by the Central Government on 8.10.2018.

[No. L-42025/03/2018– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan Presiding Officer

Dated the 25th day of September, 2018

INDUSTRIAL DISPUTE L.C. No. 51/2009

Between:

Sri S. Eswar Reddy,
S/o S. Narayana Reddy,
R/o Kapu Gunneri Village & Post,
Srikalahasti Mandal,
Chittoor District. …Petitioner

AND

1. The Chief General manager,
   Bharat Sanchar Nigam Ltd., Circle,
   Abids, Hyderabad.
2. The General Manager,
   BSNL, Tirurpathi,
   Chittoor District.
3. The Divisional Engineer (Maintenance)
   BSNL, Srikalahasti, Chittoor district.
4. The Sub-Divisional Engineer,
   Telecom, Srikalahasti, Chittoor District.

….Respondents

Appearances:

For the Petitioner : M/s. Ch. Indrasena Reddy & D.Vilas, Advocates

For the Respondent : M/s. B. Devanand, Advocate

AWARD

Sri S. Eswar Reddy who worked as casual mazdoor (who will be referred to as workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents seeking for declaring the oral termination order w.e.f. 1.11.2003 passed by the Respondents as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

The case of the Petitioner is that the Petitioner worked as a casual mazdoor in the Respondents' industry from 1.2.1988 and continued till 1.11.2003. He worked continuously under the Respondents with unblemished record of service till he was terminated orally by the Respondent authorities w.e.f. 1.11.2003. It is stated that while terminating the Petitioner from service the Respondents authorities have not assigned any reason for his illegal termination and the Petitioner was not given any notice and notice pay in lieu of notice and also not paid the retrenchment compensation which is mandatory as per the provisions of the Industrial Disputes Act, 1947. It is further submitted that while terminating the Petitioner from service the Respondents authorities have not complied or followed the mandatory provisions of the Industrial Disputes Act, 1947. Therefore, the entire action taken by the Respondents against the Petitioner is illegal, unjust, contrary to Law and contrary to the provisions of the Industrial Disputes Act, 1947 and also in violation of the principles of natural justice. It is further submitted that the Petitioner worked as a casual mazdoor in the office of the Sub-Divisional Officer, Tirupathi and Telecom, Gudur from 1.2.1986 to 1.3.1989. He worked continuously as a casual mazdoor in various sections upto the month of February, 1992. It is also further submitted that the Petitioner has worked as a casual mazdoor from the month of May, 1991 to February, 1992 under the control of Respondent No.1 for a period of 270 days. The Petitioner also submitted that he made several representations to the 2nd Respondent and 4th Respondent to reengage him as a casual mazdoor, but no action was taken by the above Respondents and as such he was compelled to file OA No.583 of 2000 before the Hon'ble Central Administrative Tribunal, Hyderabad. The Hon'ble Tribunal was pleased to direct the 4th Respondent to consider the representation made by the Petitioner for re-engaging him as a casual mazdoor *vide* order dated 26.4.2000. The Petitioner further submitted that pursuant to the above order of the Hon'ble Central Administrative Tribunal the 4th Respondent issued letter bearing No.E85/May/CMM/III2k dated 20.6.2000 to the Petitioner directing him to submit the original records. Accordingly, the Petitioner submitted the original records as per the demand of the 4th Respondent and the 4th Respondent after careful scrutiny of the records having found correct, on 10.7.2001 re-engaged the Petitioner, and passed the order of his re-engagement as casual mazdoor and on 12.7.2001 the Petitioner joined in service, and worked in RSU, Telecom Exchange, Srikalahasthi from 12.7.2001 to 31.10.2003. The Petitioner further submitted that while the matters stood thus, to the utter surprise and dismay of the Petitioner the Respondent authorities once again orally directed the Petitioner not to attend the work as casual mazdoor on 1.11.2003. The Petitioner also submitted that the Respondents' authorities without issuing any notice and without following the procedures contemplated under the Statute, contrary to the orders passed by the Hon'ble Central Administrative Tribunal, Hyderabad directed the Petitioner not to attend the work as casual mazdoor, which is illegal, improper, unjust and in violation of the principles of natural justice. The Petitioner further stated that he submitted a representation on 3.11.2003 to the 4th Respondent questioning him to reengage him as casual mazdoor, but no action was taken by Respondent No.4. Therefore, the Petitioner made several representations before the Respondents' authorities but all the efforts made by him proved futile. But the Respondent authorities never chosen to consider the case of the Petitioner for re-engaging him as casual mazdoor. The Petitioner also submitted that there after he approached the Hon'ble High Court of A.P., by filing WP No.12718/2004 seeking direction to the Respondents to pay the wages on pro-rata basis in pursuance of the rates submitted by him. the Hon'ble High Court was also pleased to dispose of the said writ petition, directing the Respondents to consider the said representation and pay the wages on pro-rata basis by order dated 17.8.2004. Subsequent to the above said order the 2nd Respondent sanctioned an amount of Rs.16,593/- to the Petitioner towards the difference of pro-rata wages for the period from 1.5.2002 to 31.7.2003 on 30.12.2004 and issued a cheque bearing No.295682 dated 4.2.2005 for Rs.16,593/-. It is also stated that inspite of several representations submitted by the Petitioner to reengage him as a casual mazdoor the Respondents authorities did not consider the same, as a result of which the Petitioner is put to suffer untold hardship and mental agony, besides manifest injustice was caused to him. Therefore, the Petitioner once again approached the Hon'ble High Court of A.P., by filing another WP No.28160/2005 and the Hon'ble Court by an order dated 26.12.2007 dismissed the said writ petition by giving opportunity to him to approach this Tribunal under Industrial Disputes Act, 1947 for appropriate relief. Thereafter, the Petitioner was compelled to file this petition. It is also submitted that since the date of termination from service, he remained unemployed and could not secure any alternative employment in spite of his best and honest efforts and he is the only earning member in his entire family and due to his illegal termination, not only he himself but also his entire family was thrown on the streets for no fault of them. It is submitted that the action of the Respondents' management by not allowing the Petitioner to work as a casual mazdoor is illegal, unjust, contrary to law, contrary to the provisions of the Industrial Disputes Act, 1947. It is also stated that some of his juniors were retained in service. But he was alone thrown on the streets for reasons best known to the management. Therefore, the action of the Respondent is illegal, discriminatory and colourable exercise of powers. With these averments, the Petitioner filed this dispute claiming the above mentioned relief.

3. **The Respondents filed counter jointly with the averments in brief which runs as follows**:

All the Respondents in their joint counter while denying the material facts averred in the claim statement, have specifically submitted that the workman himself absconded for duty from 1.4.2003 to 30.6.2003 without obtaining any permission from the controlling officer. The workman did not turn up for duty from 1.7.2003 to 31.7.2003, the reasons are best known to him. Therefore, the Respondents could not serve the advance notice to the workman who has not furnished his whereabouts and address particulars. It is also stated that the workman worked in Gudur in Nellore SSA who has not furnished details of days worked. The allegation of the workman that he worked continuously for a period of 270 days from 1.5.1991 to 28.2.1992 is not correct. Pursuant to the order of the Hon'ble Central Administrative Tribunal Hyderabad, the workman was re-engaged as casual labour and also in pursuance of the DOT, New Delhi *vide* letter dated 12.2.1999, the DOT imposed complete ban on engagement of casual labourers engaged on daily wages, monthly wages and instructions were issued to disengage such casual mazdoors who have been engaged after the cut off

date i.e., 31.3.1985. The Petitioner was paid wages for the period from May, 2002 to July, 2003 except in the month of April, May and June, 2003. It is stated that the Petitioner did not submit any representation on 3.11.2003 so the question of re-engagement of the workman does not arise, in view of the ban order imposed by the Respondents *vide* letter dated 12.2.1999. It is also submitted that the Petitioner has been paid pro-rata wages of Rs.16,593/- through Cheque No.29562 dated 17.8.2005 as per the order of the Hon'ble High Court of A.P., passed in WP No.12718 of 2004. It is also stated that the Petitioner has voluntarily absconded from duty. The Respondents have never terminated the Petitioner from service. The Petitioner himself found absent for work and left the organization without any notice and permission from the Respondents. No casual mazdoor is to be engaged after cut off date i.e., after 31.3.1985 as per DOT letter dated 22.6.1988 and the ban was imposed not to recruit any casual labourers thereafter i.e., after 22.6.1988. The scheme dated 7.11.1989 is not at all applicable to the workman, as the relaxation of rules regarding temporary status is also not applicable to the workman. As workman was not engaged before the cut off date. It is further submitted that there is no merit in the petition filed by the Petitioner and the same is liable to be rejected.

4. During the course of hearing of the case, the Petitioner has been examined himself as WW1 and also proved 14 documents as Ex.W1 to W14. Similarly, the Respondents examined one witness as MW1 and also proved 4 documents as Ex.M1 to M4.

5. I have already heard the counsels for both the sides and perused the evidence adduced on behalf of the parties.

6. **The points for determination are**:

I. Whether the action of the management of Bharat Sanchar Nigam Ltd., in terminating the services of Sri S. Eswar Reddy, a casual mazdoor w.e.f. 1.11.2003 is legal and justified?

II. If not, to what relief the Petitioner workman is entitled for?

7. The workman in his examination in chief evidence fully corroborated the averments made in his claim statement. But in his cross examination he denied the suggestion of the Respondents and also denied that he has not voluntarily absent for duty. MW1 in his chief examination fully supported the averments made in his counter as well as in his chief evidence affidavit. But, in his cross examination MW1 had admitted that he has no knowledge about the Petitioner as he has been working as a Divisional Engineer at Srikalahasti with R3 from April, 2013 only. He denied the suggestion of the Respondents stating that the Petitioner worked in the Respondents' organization as a casual labourer since 1.2.1986 and thereafter his services were orally terminated by their office on 1.11.2003. He admitted that the Petitioner had worked for them only for two months from February, 2003 and again he worked for one month during July, 2003. He also admitted that Ex.W10 shows the particulars of the work done by the Petitioner during the periods from 1986 to 1988. Ex. W11 is the certificate issued by the Accounts Officer, DTE, Tirupathi which shows clearly that he Petitioner worked for 270 days from May, 1991 to April, 1992. As per Ex.W13, payment was made to casual labourers by the 3rd and 4th Respondents. Ex.W14 is the certificate, which shows that the Petitioner worked from 1.11.2002 to 30.11.2002 and Ex.M1 was issued on 22.6.1988. He clearly admitted that as per the records produced by the Petitioner, he has been working with the Respondents since, February, 1986. MW1 denied the suggestion of the Petitioner to the effect that the Petitioner has not worked for more than 240 days in a year. He also denied that they have received Ex.W4 and W5 the representation of the Petitioner. But he admitted that pursuant to Ex.W6 orders of Hon'ble High Court of A.P., the Respondent had made payment to the Petitioner through cheque vide Ex.W9. He also admitted that they have not issued any notice to the Petitioner while terminating him from service, and they have not paid any retrenchment compensation to him. He admitted that the Petitioner used to perform the duty of cleaning of the premises etc., as a casual mazdoor. He admitted that the Petitioner worked as a casual labour, and the said work was perennial in nature. He denied to the suggestion of the counsel of the Petitioner to the effect that the termination of the service of the Petitioner was illegal and he is entitled for reinstatement and eligible for all consequential benefits.

8. The evidence of MW1 clearly indicates that the Petitioner was working as a casual labourer under the Respondent's and he had worked more 240 days in a year and his work is perennial in nature. He has been terminated from service orally as he was absent from duty. No notice has been served on the Petitioner at the time of his termination and no retrenchment or notice pay was paid to the Petitioner.

9. The Learned Counsel appearing on behalf of the Petitioner contended that in view of the admission of the witnesses examined on behalf of the management, the Petitioner worked for 240 days in a year, he has been terminated without any notice and his work was perennial in nature. No notice has been served on the Petitioner before his termination, no retrenchment compensation is paid to him since the Petitioner is a casual mazdoor and is not getting any employment till date, the Respondents should be directed to reinstate the Petitioner. He also contended that as the procedure has not been followed while terminating the services of the Petitioner , he is entitled to get all the benefits under Sec.25F of the Industrial Disputes Act, 1947 before his termination.

10. On the other hand, the Learned Counsel appearing on behalf of the Respondents contended that in view of the letter of DOT vide Ex.M1 dated 22.6.88 and Ex.M2 the Respondents Department has no authority to conduct any recruitment, or engagement of casual labourers as the same has been banned *vide* letter No.269-4/93-STN-II(Pt.) dated 12.2.99 only they can engage the labourers on daily wages or monthly wages basis either directly or through contractor. In view of the ban order of the DOT, the Respondents can not engage any casual labourers. Even though the Petitioner has worked under the Respondents he is not entitled to get reinstatement in view of the ban order of DOT. He further contended that the Petitioner has absconded for duty, his services can not be terminated. Thus, the claim of the Petitioner is liable to be rejected.

11. On consideration of the rival contentions of both the sides it is made clear that the Petitioner has joined in the services of the Respondents, worked under the Respondents from 1.2.88 to 1.3.89. He has also worked as casual mazdoor from May, 1991 to February, 1992 and subsequently joined n service on 2.7.2001 and worked till 31.10.2003 and thereafter he was not allowed to work. During the above period the Petitioner had worked for more than 240 days in a year. But the Respondents have not issued any notice of termination while terminating the Petitioner from service as required under Sec.25F of the Industrial Disputes Act, 1947. He has also not paid the retrenchment compensation for the period he worked under the Respondents. When the Respondents have admitted that the Petitioner has worked for 240 days in a year and no retrenchment notice has been served on him and no retrenchment compensation has been paid to him and his work was perennial in nature, the Respondents are liable to pay the same to the Petitioner and the termination of the Petitioner is not legal and justified.

Thus, Point No.I is answered accordingly.

12. **Point No.II**: In view of the findings made above, since the termination of the Petitioner is illegal, the Petitioner is entitled to be retrenched / terminated as per the procedure laid down under Sec.25F of the Industrial Disputes Act, 1947. As there is ban order for engagement of casual labourers in service , the Petitioner is not entitled to get reinstatement into service, but entitled to get the retrenchment compensation.

ORDER

In the result, the action of the management of Bharat Sanchar Nigam Ltd.,, in terminating the services of Sri S. Eswar Reddy, a casual mazdoor w.e.f. 1.11.2003 is held as illegal and not justified. The Petitioner workman is not entitled for reinstatement into service as there is ban order for engagement of casual labourers at Bharat Sanchar Nigam Ltd.. But he is entitled to get the retrenchment compensation as provided under Sec.25 F of the Industrial Disputes Act, 1947.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 25th day of September, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri S. Eswar Reddy	MW1: Sri Y.Nagaiah

Documents marked for the Petitioner

Ex.W1: Photostat copy of orders in OA No.583/2000 of Hon'ble Central Administrative Tribunal, Hyderabad dt. 26.4.2000

Ex.W2: Photostat copy of lr. by Sub-Divisional Officer, to WW1 dt. 20.6.2000

Ex.W3: Photostat copy of lr. by DE(Admn) Tirurpathi to DE, Srikalahasti, dt. 5.7.2001

Ex.W4: Photostat copy of representation of WW1 dt. 3.11.2003 to the Respondents

Ex.W5: Photostat copy of representation of WW1 dt. 5.11.2003 to the Respondents

Ex.W6: Photostat copy of orders of Hon'ble High Court dt. 17.8.2004 in WP No.12718/2004

Ex.W7: Photostat copy of lr. dt.30.12.2004 by Asst. General Manager, Tirupathi to Respondent No.3

Ex.W8: Photostat copy of statement i.r.o. WW1 reg. difference of wages

Ex.W9: Photostat copy of Cheque issued by 2nd Respondent dt. 4.2.2005

Ex.W10: Photostat copy of table of working places of WW1 with Respondents from 28.2.1986 to 31.3.1990

Ex.W11: Photostat copy of days certificate by Accounts Officer of 2nd Respondent

Ex.W12: Photostat copy of lr. by The General Manager, reg. grant of tem. Status to casual labourers who have completed 240 days as on 1.8.1998

Ex.W13: Photostat copy of receipts of 3rd & 4th Respondents reg. payment of wages to casual labourers for the period from 1.10.2002 to 30.11.2002

Ex.W14: Photostat copy of certificate issued by the JTO., of 3rd & 4th Respondents to WW1 for the period from 1.10.2002 to 30.11.2002

Documents marked for the Respondent

Ex.M1: Photostat copy of DOT letter No.270-6/84-STN, New Delhi dt. 22.6.1988

Ex.M2: Photostat copy of DOT lr. No.269-10/89-STN, New Delhi dt. 7.11.1989

Ex.M3: Photostat copy of DOT lr. No.269-4/93-STN.II, New Delhi dt. 12.2.1999

Ex.M4: Photostat copy of veeding out of records.

नई दिल्ली, 12 नवम्बर, 2018

का.आ. 1631.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, निदेषक, कृषि में महिलाओं पर अनुसंधान निदेषालय, भुवनेष्वर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेष्वर के पंचाट (संदर्भ संख्या 14/2015) को प्रकाशित करती है, जो केन्द्रीय सरकार को 15.10.2018 को प्राप्त हुआ था।

[सं. एल—42011/25/2015—आईआर (डीयू)]

राजेंद्र जोषी, उप निदेषक

New Delhi, the 12th November, 2018

S.O. 1631.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 14/2015) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the Director, Directorate of Research on Women in Agriculture, Bhubaneshwar and their workman, which was received by the Central Government on 15.10.2018.

[No. L-42011/25/2015– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present :

Shri B.C. Rath,
Presiding Officer, C.G.I.T.-cum-Labour
Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 14/2015

Date of Passing Order – 4th September, 2018

Between:

The Director,
Directorate of Research on Women in Agriculture,
(Formerly National Research Centre for Women in
Agriculture), Kalinga Studio Square, Bharatpur,
Bhubaneswar (Orissa) – 751 003. …1st Party-Management

(And)

The Vice President,
Contract & Construction Labour Union,
Plot No. 32, Ashok Nagar,
Bhubaneswar (Orissa) – 751 009. …2nd Party-Union.

Appearances:

None …For the 1st Party-Management
None …For the 2nd Party-Union

ORDER

By its order vide letter No. L-42011/25/2015/IR(DU), dated 20.04.2015 the Government of India in the Ministry of Labour in exercise of its authority conferred by clause (d) of sub-section (1) and sub-section (2-A) of Section 10 of the Industrial Disputes Act (herein after referred to as "The Act") have referred an industrial dispute for its adjudication with the schedule "Whether the demand of Contract & construction Labour Union for payment of legal wages to contract labour (as per list enclosed) at par with Group-D staff of the employer (Directorate of Research on Workmen in Agriculture, Bhubaneswar) is legal and/or justified? If not, what relief the workmen are entitled to?".

On receipt of the reference notice was issued to the 2nd party-Union who made his appearance and filed its statement of claim. Thereafter, the Management was noticed to file its written statement. As the Management failed to appear and file its written statement inspite of notice being found sufficient, it was set exparte and the case was posted for taking evidence of the 2nd party-Union. When the matter was in such a stage the 2nd party-Union failed to attend the court and adduce its evidence inspite of being given several opportunities. The adjudication process cannot be protracted for an indefinite period awaiting the appearance of the parties on their sweet-will. As a matter of fact a dispute cannot also be settled in absence of the parties more particularly in absence of pleadings and evidence of the disputant. As the disputant does not evince any interest to proceed with the case and there is absolutely no evidence/materials before the Tribunal for adjudication of the dispute, there is no alternative than to dismiss the reference case without passing any award since the I.D. Act and its Rules do not mandate that a nil award or a no-dispute award is to be given in case of absence of the disputant in an adjudication process. Rather, it has been well settled that passing of a no-dispute award/nil award is a misconception. It is also pertinent to mention here that until adjudication of the dispute referred to by the authority concerned, an award cannot be made within the meaning of the award as defined under section 2-b of the Act. The above position has been settled in a decision of the Calcutta High Court in the case of B.R. Bermen and Mohatta (India) Pvt. Ltd., -versus- Seventh Industrial Tribunal, West Bengal and others short noted in 1977 Lab. I.C. (NOC) 13 (CAL). In the above back-drops the case registered on the reference is dismissed without any award and accordingly the reference is disposed of. A copy of this order be sent to the Government of India, Ministry of Labour for taking necessary action at their end.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 12 नवम्बर, 2018

का.आ. 1632.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य महाप्रबंधक, भारत संचार निगम लिमिटेड, हैदराबाद और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 10/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 8.10.2018 को प्राप्त हुआ था।

[सं. एल–42025/03/2018–आईआर (डीयू)]

राजेंद्र जोषी, उप निदेषक

New Delhi, the 12th November, 2018

S.O. 1632.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (LC No. 10/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief General Manager, Bharat Sanchar Nigam Limited, Hyderabad and others and their workman, which was received by the Central Government on 8.10.2018.

[No. L-42025/03/2018– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 24th day of September, 2018

INDUSTRIAL DISPUTE L.C.No. 10/2011

Between:

Sri R. Sathya Anasuya,
W/o Late Ramulu,
Part time Sweeper,
O/o Sub-Divisional Engineer (Material
Maintenance), General Manager Telecom
District (BSNL) …Petitioner

AND

1. The Chief General Manager,
   Telecom (BSNL), Andhra Pradesh,
   Door Sanchar Bhavan,
   Hyderabad – 500 001.
2. The General Manager Telecom District(BSNL),
   Nizamabad. Nizamabad District.
3. The Sub-Divisional Engineer (Material maintenance)
   O/o General Manager Telecom District (BSNL)
   Nizamabad. Nizamabad District.
4. The Divisional Engineer (Planning) BSNL,
   O/o General Manager Telecom District (BSNL)
   Nizamabad. Nizamabad District.
5. The Divisional Engineer (Administration)
   O/o General Manager Telecom District (BSNL)
   Nizamabad. Nizamabad District. … Respondents

Appearances:

For the Petitioner : M/s. Dr. A. Raghu Kumar, P. Basavaiah & B. Pavan Kumar, Advocates

For the Respondent : Sri R.S. Murthy, Advocate

AWARD

Smt. R. Sathya Anasuya, the Petitioner who worked as Part time Sweeper in the Respondent organization has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents State Bank of India seeking for declaring the oral termination order of the 2nd Respondent in terms of letter No. 269-94/98-STN-II dated 29.9.2000 is illegal, arbitrary and consequently directing the Respondents to reinstate the Petitioner into service with continuity of service, with full back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. The Petitioner workman has filed her claim petition and Respondents also filed their respective counter statement.

3. The case stands posted for hearing and recording of the Petitioner's evidence.

4. Inspite of availing several opportunities to adduce evidence, the Petitioner workman remained absent and there is no representation on behalf of the Petitioner, and the Petitioner failed to adduce evidence on her behalf. This is a case of the year 2011. Non-appearance of the Petitioner to purse her case clearly indicates that perhaps the Petitioner is not interested to pursue the case and to raise her claim. In the circumstances stated above, it is not proper to linger the case to any further date. Hence, the case of the Petitioner is closed. Thus, one 'No dispute' award is passed.

Award is passed accordingly. Transmit.

Typed to my dictation by Smt. P. Phani Gowri, Personal Assistant, corrected by me on this the 24th day of September, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 12 नवम्बर, 2018

का.आ. 1633.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, एसडीओ, टेलीग्राफ, निपंदा, पुरी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, भुवनेष्वर के पंचाट (संदर्भ संख्या 79/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.09.2018 को प्राप्त हुआ था।

[सं. एल–42025/03/2018–आईआर (डीयू)]

राजेंद्र जोषी, उप निदेषक

New Delhi, the 12th November, 2018

S.O. 1633.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. Case No. 79/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Bhubaneswar as shown in the Annexure, in the industrial dispute between the employers in relation to the SDO, Telegraph, Nimpada, Puri and their workman, which was received by the Central Government on 28.09.2018.

[No. L-42025/03/2018– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, BHUBANESWAR

Present: Shri B.C. Rath, Presiding Officer, C.G.I.T.-cum-Labour Court, Bhubaneswar.

INDUSTRIAL DISPUTE CASE NO. 79/2013

[Filed under section 2-A(2) of the I.D. Act]

Date of Passing Order – 29th August, 2018

Between:

Shri Jatindra Khuntia,
S/o. Pitabas Khuntia, Vill. Nadhana,
Po. Bhilligram, Ps. Nimapada, Dist. Puri,
Odisha.

…Applicant Petitioner

(And)

1. Shri P.K. Dash,
   S.D.O., Telegraph, Nimapada,
   At./Po./Ps. Nimapada, Dist. Puri

2. D.E.T., Puri, Telephone Bhawan, Puri
   Back side of Hotel Lee Garden.

3. General Manager, Telecom Department,
   Bhubaneswar, Rupali Chhaka,
   Back side of IPICOL Office, Dist. Khordha.

…Managements

Appearances:

Shri J. Khuntia …For Himself Applicant-Petitioner

Shri P.K. Dash, SDO, Telegraphs, Nimapara … For the Managements

AWARD

This award is directed again an application preferred by one Jatindra Khuntia resorting to the provisions of Section 2-A(2) of the Industrial Disputes Act, 1947 (in short "The Act").

2. Briefly stated, the case of the applicant as revealed from his statement of claim is that he was working as a casual labourer under the S.D.O. Telegraph, Nimapara from October, 1997 and doing the work of cable jointer till he was discharged from his duty with effect from 24.5.2013. Since he was working continuously as a casual labourer in between October, 1997 to May, 2013 he put-forth a claim before the S.D.O., Nimapara to regularize his service. As the S.D.O. did not pay any heed to his demand he raised a dispute before A.L.C.(C), Bhubaneswar. On being noticed Dy. General Manager, Telecommunication, Bhubaneswar submitted a statement before the labour machinery that service of contractual worker was no more required as some permanent candidates were engaged. It is the further claim of the applicant workman that a committee was constituted by the Telegraph Department for regularization of services of casual labourers who had worked for a long period. Accordingly the committee prepared a list of 50 candidates and recommended the authority for regularization of their services. Being enlisted in Sl. No. 10 his service should have been regularized. When conciliation was failed the labour machinery issued a certificate giving liberty to the applicant to approach the Tribunal directly resorting the provisions of Section 2-A(2) of the Act. Hence, the case is filed with a prayer for regularization of service of the applicant and for a direction to the O.P.-Management for making of payment of Rs. 54,000/- towards arrear wages to the applicant since the Management failed to pay the arrear wages to the applicant.

3. On being noticed the O.P.-Managements submitted a common written statement refuting the claim of the applicant workman. It is their stand that the applicant was engaged as a daily labourer as and when required. Consequent upon decreasing of land line connections under SDO (T), Nimapara requirement of daily wager for maintenance of land line network was reduced. As such there was no necessity on the part of the Managements more particularly Management No. 1 to engage casual labourer. Therefore, the applicant was disengaged and his engagement as a casual labourer was not required after 24.5.2013. The Managements have also taken a stand that no regularization of service of a daily wager is ever made and as such regularization of service of the applicant does not arise. They have also denied outstanding of any wages payable to the applicant. Thus, prayer has been made for dismissal of the dispute on point of law as well as fact.

4. On the aforesaid pleadings of the parties the following issues have been settled for adjudication of the dispute.

ISSUES

1. Whether the application filed by the applicant-workman under Section 2-A(2) is maintainable?
2. Whether the applicant-workman had worked under the Management No. 1 and 2 before the alleged removal on 24.5.2014?
3. Whether the termination of the applicant-workman is illegal and unjustified and violative of the provision of the Act?
4. If not, to what relief the workman is entitled?

5. The applicant and the Managements have adduced oral as well as documentary evidence in support of their respective averments. The applicant has examined himself and filed copy of the committee report on regularization of casual labourers, copy of the certificate issued by S.D.O., Telegraph, Nimapara, copy of the certificate issued by L.M., Bamanal, copy of the certificate issued by T.M., Nimapara, copy of the certificate issued by T.M. Nimapara, copy of the certificate issued by T.M., Konark, copy of the A.C.G. 17, copy of the store issue order and copy of the certificate issued by J.T.O., Nimapara which are marked as Ext.-1 to Ext.-9. On the other hand the Management has examined the S.D.O., Telegraphs, Nimapara to refute the claim of the applicant.

FINDINGS

6. Since all the issues are inter-related to each other they are taken jointly for consideration for the sake of convenience.

It is the oral evidence of the applicant that he was working as a cable jointer under the direct control and supervision of the Management No. 1 from October, 1997. But on 24.5.2013 he was disengaged all of a sudden. Hence, he approached the S.D.O., Nimapara and other higher authorities raising dispute over his disengagement. On 30.8.2013 D.E.T (Rural & Administration) informed him that the office of the SDO, Nimapara needed no contractual labour for cable working. According to him a committee was constituted by the Chairman of the Telephone Department for regularization of casual labourers and the committee had empanelled him in the list for regularization of his service. He was not paid wages for his engagement for certain period as a result of which the Management is required to pay Rs. 54,000/- to him towards his arrear wages. In his oral testimony he has claimed for regularization of his service and payment of arrear wages to the tune of Rs. 54,000/-. His engagement as casual labourer on daily wage basis by the Management No. 1 is not seriously disputed except that he was engaged as and when required. There is also no serious

dispute on the part of the Managements which is revealed from the oral testimony of O.P.W No. 1 that engagement of the applicant was discontinued since there was no need of contractual worker due to decrease of land-line connections. It is pertinent to mention here that the disputant applicant has neither asserted in his statement of claim nor in his oral testimony that he was working for more than 240 days in each calendar year preceding to his disengagement and his disengagement was in violation of the provisions of Section 25-F of the Act. It is also not his case that he was disengaged without any notice or notice pay and rehabilitation compensation. Mere reading of his statement of claim as well as sworn affidavit filed towards his examination in chief reveals that the dispute has been raised directly before this Tribunal for regularization of his service after his disengagement on 24.5.2013. No specific claim has been made either in the statement of claim or in the oral testimony of the applicant that his disengagement/retrenchment without compliance of provisions of Section 25-F was illegal and unjustified for which he is required to be reinstated. Furthermore, there is no credible document or evidence from which it can be safely concluded that the applicant worked for more than 240 days in a twelve months calendar year preceding to his alleged disengagement. The law is well settled that burden lies on the workman to establish a claim that he worked for 240 days in a calendar year in order to claim his retrenchment or disengagement, if any, illegal for non-compliance of the provisions of Section 25-F of the Act. Thus, the evidence of the workman is also wanting to prove his disengagement or retrenchment with effect from 24.5.2013 was illegal and unjustified.

7. It is also pertinent to mention here that as per the provisions of Section 2-A(2) of the I.D. Act no dispute other than discharge/dismissal/retrenchment and termination can be raised before the Tribunal resorting to the above sections. Plain reading of the application of the workman suggests that the dispute has been raised for regularization of his service and payment of arrear wages to him and it is not related to his retrenchment or disengagement. That being the claim and prayer in the application preferred under section 2-A(2) of the Act the Tribunal has no jurisdiction to entertain such dispute on regularization of service under the provisions of the Section 2-A(2) of the Act.

In the above facts and circumstances the statement of claim filed by the disputant applicant has no merit for consideration and the same stands rejected. Copy of this award be sent for publication in the official gazette as per the rules.

Dictated & Corrected by me.

B. C. RATH, Presiding Officer

नई दिल्ली, 12 नवम्बर, 2018

का.आ. 1634.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, प्रबंधन, जवाहर लाल नेहरू इंस्टीट्यूट फॉर डेवलपमेंट बैंकिंग और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, हैदराबाद के पंचाट (संदर्भ संख्या 95/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28.09.2018 को प्राप्त हुआ था।

[सं. एल–42025/03/2018–आईआर (डीयू)]

राजेंद्र जोषी, उप निदेषक

New Delhi, the 12th November, 2018

S.O. 1634.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (LC No. 95/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the employers in relation to the Management, Jawaharlal Nehru Institute for Development Banking and others and their workman, which was received by the Central Government on 28.09.2018.

[No. L-42025/03/2018– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Sri Muralidhar Pradhan, Presiding Officer

Dated the 29th day of August, 2018

INDUSTRIAL DISPUTE L.C. No. 95/2005

Between :

Sri G. Ravikiran,
S/o G.Sathaiah,
R/o H.No. 13-14-15/P Nehru Nagar,
Sherlingampally,
Hyderabad. … Petitioner

AND

1. The TDT Electrical Contractor,
C/o J.N.I.D.B.,
Gachi Bowli, Hyderabad – 500 019.

2. The Management of J.N.I.D.B.
(Jawarharlal Nehru Institute for Development Banking)
Gachi Bowli, Hyderabad – 500 019.

….Respondents

Appearances:

For the Petitioner : M/s. K. Ravinder Goud & Y. Ranjeeth Reddy, Advocates

For the Respondent : M/s. S. Prabhakar Reddy & S. Rajeswari, Advocates

AWARD

Sri G. Ravikiran, who worked as an Electrician (who will be referred to as workman) has filed this petition under Sec. 2A(2) of the Industrial Disputes Act, 1947 against the Respondents M/s. Jawarharlal Nehru Institute for Development Banking seeking for declaring the termination order dated 23.5.2005 issued by the Respondents as illegal, arbitrary and to set aside the same consequently directing the Respondents to reinstate the Petitioner into service duly granting all the consequential benefits such as continuity of service, back wages and all other attendant benefits etc., and such other reliefs as this court may deems fit.

2. **The averments made in the petition in brief are as follows**:

The Petitioner was appointed as an Electrician on 1.8.2004 and worked upto 22.5.2005. The above appointment of the Petitioner was oral and his termination is also oral. The Respondent No.2 is the Principal Employer and Respondent No.1 is under the control of the Respondent No.2 for awarding work. On 22.5.2005, the Petitioner was orally terminated from service. From 23.5.2005 he was not allowed to perform his duties. The above termination of the Petitioner from 23.5.2005 onwards is illegal, unjust and contrary to the provisions of the Industrial Disputes Act, 1947 and unfair on the part of the management. it is stated that the Petitioner was paid by the management a salary of Rs.2500/- pm. The management ha snot provided PF & ESI to the Petitioner. The Respondent No.1 has not paid minimum wages to the Petitioner as per Government orders issued by the Government from time to time. After termination of service, the Petitioner issued legal notice to the Respondents through his counsel on 30.5.2005 and the said notice was received by the management (Respondent No.2). But Respondent No. 2 did not give any reply to the legal notice of the counsel of the Petitioner. Respondent No.1 only gave reply to his legal notice. It is further stated that the Petitioner is the senior most worker in the organization of Respondent No.1 and after termination of the Petitioner from service some other workers are appointed in place of the Petitioner. It is also submitted that the managements have not followed the principles laid down under Sec.25(F), (G), and (H) of the Industrial Disputes Act, 1947. It is submitted that the Respondents have illegally terminated the services of the Petitioner. Therefore, the oral termination of the Petitioner be declared as bad in the eye of Law. With the above averments the Petitioner filed this case claiming the relief as mentioned above.

3. Both the Respondents appeared and filed their counter separately.

4. Respondent No.1 filed the counter denying the facts averred in the claim petition and has challenged the maintainability of the petition. It is stated that the allegation made by the Petitioner in his application is neither proved nor correct. The petition filed under Sec.2A(2) of the Industrial Disputes Act, 1947 is totally misconceived as there was no dismissal, discharge or termination of the Petitioner as the Petitioner was never appointed under this Respondent as alleged, and there is no employer and employee relationship between the Respondent and the Petitioner. Hence, the petition filed under Sec.2A(2) of the Industrial Disputes Act, 1947 is not maintainable. It is also stated that Respondent No.1 is a contractor of Respondent No.2 engaged for the purpose of maintenance of electrical equipment, repairs and other related works. It is stated that Respondent No.2 has only issued the work order to attend the electrical works and accordingly by engaging two to three employees this Respondent was used to attend the electrical works. It is further submitted that this Respondent No.1 has entrusted the work of electrical maintenance and repairs to the Petitioner as a sub contractor for a short period on a monthly consolidated payment. In fact the said sub-contract was entrusted basing on the assurance made by the Petitioner that he was having a valid license. Thereafter, it was found that the Petitioner was irregular, and inexperienced and it was also revealed that he was not possessing any valid electrical license, therefore the sub-contract was not extended for further period and in view of the same the Petitioner himself has abandoned the said job-contract on his own accord. The Petitioner was never appointed as an employee by Respondent No.1 and as such there is no employer and employee relationship between the Petitioner and Respondent No.1. The Petitioner was never appointed as an electrician by Respondent No.1 at any point of time and the allegation of the Petitioner that he was appointed as an electrician on 1.8.2004 and worked upto to 22.8.2005 and from 23.8.2005 he was not allowed to perform his duties is totally false and incorrect. Similarly, the allegation of the Petitioner that Respondent No.2 is the Principal employer and Respondent No.1 is under the control of Respondent no.2 for awarding the work is false, incorrect and baseless. The Petitioner was not paid salary of Rs.2500/- by the Respondent management. In fact, the Petitioner was paid remuneration by the Respondent No.1 for the work done by him. The allegation of the Petitioner that Respondent No.1 was paying salary to him is totally false. It is also stated that the Petitioner was a senior most worker in the organization of Respondent No.1 and after his termination, some other

workers were appointed in place of the Petitioner is false and baseless. Since there is no employer and employee relationship between this Respondent No.1 and the Petitioner, this Respondent need not follow the principles laid down under Section 25 (F), (G) and (H) of the Industrial Disputes Act, 1947. The claim of the Petitioner is totally false and frivolous.

5. **The Respondent No.2 filed counter with averments in brief as follows**:

This Respondent no.2 while supporting the averments of Respondent No.1 made in his counter claim clearly, stated that the relief sought by the Petitioner to reinstate him with all back wages and other attendant benefits is beyond the scope of Sec.2(A) of the Industrial Disputes Act, 1947 and the present petition is liable to be dismissed. It is specifically stated that Jawarharlal Nehru Institute for Development Banking Limited in the course of its business/training activity have entrusted certain job work such as cleaning/sweeping, house keeping maintaining canteen, electrical, plumbing, gardening, etc. to the contractors(s). JNIDB is engaged in imparting training in the field of banking and finance and conducts various programmes, sessions, seminars etc involving participants from India as well as abroad in various fields. JNIDB was set up in the year 1991 by the erstwhile Industrial Development Bank of India, a statutory corporation established under the Industrial Development Bank of India Act, 1964 (18 of 1964) with a view of strengthen and upgrade the skills of banking professionals in India and abroad as well as to act as a focal point for research in respect of development banking. The Petitioner has filed this petition seeking reinstatement into service as a regular employee and such an issue cannot be invoked without there being any reference under Section 10 of the Act. Therefore, the present petition of the Petitioner is liable to be dismissed on this ground also. The allegation of the Petitioner is totally false and frivolous. In fact, there exists no employer and employee relationship between the Respondent No.2 and the Petitioner. Since the Petitioner has filed this petition against the Respondent No.1, the same is liable to be dismissed in limini. Both the Respondents have submitted for dismissal of the claim petition as it is not maintainable under Sec.2A(2) of the Industrial Disputes Act, 1947.

6. In this case, the Petitioner has examined himself as WW1 and also proved 4 documents as Exs.W1 to W4. On the other hand the Respondent No.1 examined one witness on his behalf as MW1 and Respondent No.2 also examined one witness as MW2 and marked no documents.

7. **The points for determination are**:

I. Whether the action of the management of Jawarharlal Nehru Institute for Development Banking Limited, in terminating the Petitioner Sri G. Ravi Kiran, electrician, w.e.f.23.5.2005 is legal and justified?

II. If not, to what relief the workman is entitled for?

8. I have already heard the Learned Counsel for both the sides in this matter and also perused the evidence by both the sides. On a perusal of the evidence adduced on behalf of the Petitioner it is seen that the Petitioner in his chief evidence affidavit has fully supported his claim. But in his cross examination by the counsel of the Respondent he admitted that his qualification is ITI(Electrical) but he has not filed any document to prove that he was an ITI certificate holder. He also admitted that he has not filed any appointment letter to prove that he was appointed by the Respondents. He has not filed his salary certificate showing that he was paid Rs.2500/- as monthly salary. He also admitted that he was orally terminated by the Respondents but he denied to the suggestion of the Respondents that he had not been appointed, and his termination did not arise. He also admitted hat he was not holding any license for wireman/electrician. He further also declined to the suggestion of the Respondents that by misleading Respondent No.1 he was holding the work of electrician.

9. The evidence of WW1 clearly indicates that there is no documentary evidence with him to prove that he was getting Rs.2500/- pm as salary from the Respondents. It is admitted that no appointment order or termination order was issued to the workman by the Respondents to work under them. MW1 in his chief evidence affidavit fully supports the averments made by Respondent No.1 in his counter. But in his cross examination, he admitted that he has engaged 2 to 3 workers for executing the work and for this he maintained attendance register, wage register etc.. But the above said registers are not produced before this court. In fact those registers have not been called for at the instance of the Petitioner. He admitted that he has not engaged the services of the Petitioner and also admitted that he never paid any wages to the Petitioner. MW1 further admitted that he paid the amount to the Petitioner in cash. But he has not produced any voucher under which he made the payment to the Petitioner. He also admitted that he never paid over time wages , leave wages, national or festival wages etc., to the Petitioner. The evidence of MW1 clearly indicates that he engaged the Petitioner for some time and paid his wages in cash, but he has not filed any document or voucher to prove the above mode of payment. But in the cross examination he denied to the suggestion of the Petitioner about his appointment under him. He is unable to say whether the Petitioner was removed from service without following due procedure or not and whether he is entitled for reinstatement into service or not and whether he is entitled to get the difference of minimum wages, over time wages and wages for the work done during the applicable days. Similary, the evidence of MW2 clearly indicates that he does not have any knowledge whether the Petitioner was removed from service without following due procedure or not.

10. During the course of argument the Learned Counsel appearing on behalf of the Petitioner submitted that the Petitioner was appointed as an Electrician on 1.8.2004 and worked upto 22.5.2005. The above appointment of the Petitioner is oral and his termination is also oral. The Respondent No.2 is the Principal Employer and Respondent No.1 is under the control of Respondent No.2 for awarding work. On 22.5.2005, the Petitioner was orally terminated from service. From 23.5.2005 he was not allowed to perform his duties. It is stated that the Petitioner was orally appointed and was orally terminated. The oral termination of the Petitioner from 23.5.2005 onwards is illegal, unjust and contrary

to the provisions of the Industrial Disputes Act, 1947 and unfair on the part of the management. It is also stated that the Petitioner was paid by the management a salary of Rs.2500/- pm. The management has not provided PF & ESI to the Petitioner. He contended that as per provisions of Law the management have to maintain certain records like, attendance register, wage register, and leave register but they have not filed the same before this court. Further MW3 in his cross examination has also admitted that if the contractor fails to pay the minimum wages, as principal employer (Respondent No.2) is liable to pay the same to the worker. It is further contended that the Petitioner is the senior most worker in the organization and the management has orally terminated some other workers are also appointed some workers in place of the Petitioner. Since the Respondents have not followed the principles laid down under Sec.25F of the Industrial Disputes Act, 1947 , the oral termination is illegal and unjust. It is also submitted by the Learned Counsel of the Petitioner to reinstate the Petitioner into service with continuity of service, back wages, and other attendant benefits.

11. On the other hand, the counsels appearing on behalf of the Respondents contended that the Petitioner has not been either appointed under Respondent No.1 or under Respondent No.2. The Respondent No.1 is a contractor under Respondent No.2 for a certain period. There is no document from the side of the Petitioner to show that he was appointed under the Respondents on 1.8.2004 and was terminated from service on 22.5.2005. In fact, if there is no document to show that there was any employer and employee relationship between the Petitioner and the Respondents. On consideration of the evidence of both the parties adduced so far as well as the rival contentions of both the sides, it is noticed that the Petitioner has worked under Respondent No.1 for certain period but the Petitioner has not produced any supporting documents in this regard. Only basing on the oral statement of the Petitioner that he has joined under the Respondents on 1.8.2004 and terminated from service on 23.5.2005 is not sufficient to belief that the Petitioner has worked continuously under the Respondents from 1.8.2004 to 22.5.2005. There is no document before this court to see whether the Petitioner has completed 240 days of work in a year preceding the date of termination. Similarly, no document is available before this court to know what type of work the Petitioner was discharging and what was the nature of his appointment under the Respondents. The Petitioner has failed to produce any document that he joined the service of the Respondents on the very particular day i.e., on 1.8.2004. When there is no document to show the nature of appointment of the Petitioner, no document regarding the period of working days of the Petitioner it can not be stated that the Petitioner was working under the Respondents for the period from 1.8.2004 to 22.5.2005. The Learned Counsel for the Respondents also submitted that the Petitioner should have moved for conciliation first, but, without doing so, the Petitioner has directly approached this court. He further contended that there is carton of decisions of the Hon'ble Hihgh Courts and Apex Court that while going to pass an order of reinstatement of a workman into service the court has to see first, the nature of appointment, the period of appointment, and availability of job. Thereafter, this court has to consider the question of reinstatement into service in the case, but in the instant case the Petitioner has failed to establish all the facts. So he is not entitled to get any relief.

12. On consideration of the rival contentions of both the sides it is noticed that the nature of appointment of the Petitioner is not known, and when there is no document to see about the nature of appointment of the workman, about the period of his appointment and about the availability of job in the Respondents' organization to absorb the Petitioner into service, how the Petitioner can get the relief as prayed for. When the Petitioner has not fulfilled the aforesaid appointment criteria, he is not entitled to get the relief as prayed for.

Thus, Point No.I is answered accordingly.

13. **Point No. II** :In view of the findings given in Point No.I, the Petitioner is not entitled to get any relief. Hence, the order.

Thus, Point No.II is answered accordingly.

ORDER

In the result, the action of the management of Jawarharlal Nehru Institute for Development Banking Limited, in terminating the services of Sri G. Ravi Kiran is held as legal and justified. Hence, the Petitioner workman is not entitled to any relief as prayed for. Hence, the order. The claim of the Petitioner is dismissed. Under the circumstances, there is no order as to costs.

Award is passed accordingly. Transmit.

Dictated to Smt. P. Phani Gowri, Personal Assistant transcribed by her corrected by me on this the 29th day of August, 2018.

MURALIDHAR PRADHAN, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
WW1: Sri G. Ravikiran	MW1: Sri T.D. Thomas
	MW2: Sri D. Bal Reddy

Documents marked for the Petitioner

Ex.W1: Photostat copy of legal notice dt. 30.5.2005

Ex.W2: Photostat copy of reply notice by Respondent No.1 dt.14.7.2005

Ex.W3: Photostat copy of G.O. Ms. No. 524

Ex.W4: Photostat copy of G.O.Ms. No. 488

Documents marked for the Respondent

NIL

नई दिल्ली, 13 नवम्बर, 2018

का.आ. 1635.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, पष्चिम रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 54/2017) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.11.2018 को प्राप्त हुआ था।

[सं. एल–41012/94/2016–आईआर (बी–1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th November, 2018

S.O. 1635.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 54/2017) of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 13.11.2018.

[No. L-41012/94/2016– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,

Ahmedabad,

Dated 11th October, 2018

Reference (CGITA) No- 54/2017

1. The Chief Medical Officer,
   Western Railway,
   Railway Hospital, Bhavnagar Para,
   Bhavnagar (Gujarat)
2. The General Manager,
   Western Railway, Churchgate,
   Mumbai
3. The Divisional Railway Manager,
   Western Railway,
   Bhavnagar Para,
   Bhavnagar (Gujarat) … First Parties

V/s

The National Vice President,
Bhartiya Railway Mazdoor Sangh,
28-B, Narayan Park,
Behind Chandkheda Railway Station, Sabarmati,
Ahmedabad (Gujarat) – 382470 …Second Party

For the First Party : Shri Harish R. Raval

For the Second Party : None

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41012/94/2016–IR(B-I) dated 08.06.2017 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the action of the Chief Medical Superintendent, W.R., Bhavnagar and Divisional Railway Manager, W.R., Bhavnagar to transfer Shri Sanjay M. Tirdiya, O.S. and protected workman (Divisional Secretary) of Union from Bhavnagar to Savarkundala is legal, fair and justified? If not, so then what relief Shri Sanjay M. Tirdiya, O.S. and protected workman (Divisional Secretary) of Union is entitled to?"

1. The reference dates back to 08.06.2017 and received on 19.06.2017 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. All the parties issued notice Ex. 2 on 04.01.2018 to appear on 06.03.2018. Acknowledgement slips of notice sent to the parties were also received vide Ex. 3, 4, 5 & 6.

3. In response to the notice, the first party submitted the vakalatpatra Ex. 7 of Shri Harish R. Raval but the second party despite giving half a dozen of opportunities, refrained to submit statement of claim.

4. Thus it appears that the second party workman or his union are not willing to prosecute the case.

5. It is noteworthy that the second party workman has been serving as Office Superintendent in the office of Chief Medical Superintendent, Western Railway, Bhavnagar and cannot be said to be a protected workman only on the ground that he was a Divisional Secretary of a Trade Union.

6. It is also noteworthy that the post of Office Superintendent used to be Class C post and the services of such employees are used to be transferable. Therefore, the reference has no force and moreover he has not preferred to submit the statement of claim.

7. Thus the reference is disposed of in the absence of the statement of claim of the second party with the observation as under: "the action of the Chief Medical Superintendent, W.R., Bhavnagar and Divisional Railway Manager, W.R., Bhavnagar to transfer Shri Sanjay M. Tirdiya, O.S. and protected workman (Divisional Secretary) of Union from Bhavnagar to Savarkundala is legal, fair and justified."

P. K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2018

का.आ. 1636.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, पष्चिम रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 08/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.11.2018 को प्राप्त हुआ था।

[सं. एल–41011/100/2012–आईआर (बी–1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th November, 2018

S.O. 1636.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 08/2013) of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 13.11.2018.

[No. L-41011/100/2012– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court,

Ahmedabad,

Dated 04th October, 2018

Reference (CGITA) No. 08/2013

1. The Divisional Railway Manager,
Western Railway, Pratapnagar, Baroda (Gujarat)

2. The General Manager,
Western Railway, Churchgate, Mumbai …First Parties

V/s

The Divisional Secretary,
Paschim Railway Karmachari Parishad,
Shastri Pole, Nr. Kothi, Baroda (Gujarat) …Second Party

For the First Party : Shri Rajesh Singh

For the Second Party : Shri R.S. Sisodiya (Union Representative)

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/100/2012–IR (B-I) dated 31.01.2013 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand of the union for compassionate appointment to Shri Gohil Mafatbhai Ishwarbhai S/o Late Ishwarbhai is legal, proper and just? If so, to what relief Shri Gohil Mafatbhai Ishwarbhai S/o Late Ishwarbhai is entitled to?"

1. The reference dates back to 31.01.2013 and received on 11.02.2013 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. After issuing notice to the parties, the second party submitted the statement of claim Ex. 4 on 09.08.2018 along with number of documents. It has been alleged in the statement of claim that a Gangman namely Ishwarbhai Girdharbhai suddenly died on 16.12.2000 after serving the first party Western Railway for 20 years but his son namely Gohil Mafatbhai Ishwarbhai was denied the appointment on compassionate ground under dying and harness rules despite moving applications as per due procedure. The statement of claim is supported with the death certificate, service record and other relevant documents.

3. The first party The Divisional Railway Manager, Western Railway, Pratapnagar, Baroda submitted a letter Ex. 6 along with vakalatpatra Ex. 7 of his advocate stating that the son namely Gohil Mafatbhai Ishwarbhai of the deceased workman Ishwarbhai Girdharbhai has been issued appointment letter no. E/880/1(MJG) on 21.09.2018 with a direction to join within 15 days. The second party union, in the light of the aforesaid letter and statement of the advocate for the first party, did not press the reference and requested the Tribunal to pass appropriate order.

4. Thus the reference is disposed of with a direction to the first party the Divisional Railway Manager, Western Railway, Pratapnagar, Baroda to permit the second party Gohil Mafatbhai Ishwarbhai S/o Late Ishwarbhai to join in the light of the aforesaid letter no. E880/1MJG immediately in case if he has not joined.

5. The award is passed accordingly.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2018

का.आ. 1637.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, पष्चिम रेलवे प्रबंधतंत्र के संबद्ध में नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण अहमदाबाद के पंचाट (संदर्भ संख्या 84/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.11.2018 को प्राप्त हुआ था।

[सं. एल–41011/70/2011–आईआर (बी–1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th November, 2018

S.O. 1637.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 84/2011) of the Central Government Industrial Tribunal-cum-Labour Court Ahmedabad as shown in the Annexure, in the industrial dispute between the management of Western Railway and their workmen, received by the Central Government on 13.11.2018.

[No. L-41011/70/2011– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present : Pramod Kumar Chaturvedi, Presiding Officer, CGIT-cum-Labour Court, Ahmedabad,

Dated 27th September, 2018

Reference: (CGITA) No. 84/2011

1. The Divisional Railway Manager,
Western Railway,
Pratapnagar,
Baroda (Gujarat) – 390004

2. The General Manager,
Western Railway, Churchgate,
Mumbai …First Parties

V/s

The President,
General Workmen's Union,
Sinduri Mata Devasthan, S.T. Nagar Road,
Godhra (Gujarat) – 389001 …Second Party

For the First Party : Shri Rajesh Singh Thakur

For the Second Party : Shri J.K. Ved

AWARD

The Government of India/Ministry of Labour, New Delhi by reference adjudication Order No. L-41011/70/2011–IR(B-I) dated 11.11.2011 referred the dispute for adjudication to the Central Government Industrial Tribunal cum Labour Court, Ahmedabad (Gujarat) in respect of the matter specified in the Schedule:

SCHEDULE

"Whether the demand of the Union, General Workmen's Union, Godhra for appointment of Shri Uttamsingh Bhimsingh Parmar in the Western Railway on compassionate ground is legal and justified? To what relief Shri Uttamsingh Bhimsingh is entitled?"

1. The reference dates back to 11.11.2011 and received on 01.12.2011 from Ministry of Labour and Employment, New Delhi for adjudication and passing the award.

2. Both the parties issued notice Ex. 2 on 04.04.2012 to appear on 04.05.2012. In response to the notice, the second party union submitted the statement of claim Ex. 5 on 23.11.2012 and the first party submitted the written statement Ex. 8 on 11.04.2018.

3. The case was fixed for evidence of the second party workman but today on 27.09.2018, Shri J.K. Ved, The President, General Workmen's Union, Sinduri Mata Devasthan, S.T. Nagar Road, Godhra requested the Tribunal to withdraw the case for non co-operation in leading the evidence by the second party workman.

4. Thus the reference is disposed of as withdrawn.

P.K. CHATURVEDI, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2018

का.आ. 1638.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, उत्तर रेलवे प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 47/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 13.11.2018 को प्राप्त हुआ था।

[सं. एल—12025/01/2018—आईआर (बी—1)]

बी. एस. बिष्ट, अनुभाग अधिकारी

New Delhi, the 13th November, 2018

S.O. 1638.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 47/2012) of the Central Government Industrial Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the industrial dispute between the management of Northern Railway and their workmen, received by the Central Government on 13.11.2018.

[No. L-12025/01/2018– IR(B-1)]

B. S. BISHT, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL–CUM-LABOUR COURT LUCKNOW

PRESENT : RAKESH KUMAR**,** Presiding Officer

I.D. No. 47/2012

BETWEEN :

Sri Somit Kumar, S/o Sri Banwari Lal
R/o H. No. 298/168, Krishna Nagar, Keetganj
Mewalal Ka Talab, Allahabad – 211001

AND

1. General Manager
   Northern Railway, Baroda House
   New Delhi 110001.

2. Divisional Rail Manager
   Northern Railway, Hazratganj
   Lucknow 226001.

3. M/s. Shahid Faizan Ahmad & Brothers
   654, Begum Ka Makbara, Faizabad (UP) 224001

AWARD

1. The present industrial dispute has been filed by the workman, under provisions contained in the Section 2A (2) of the Industrial Disputes Act, 1947 for alleged termination of the services of the workman by the management of Northern Railway & others, for adjudication before this Central Government Industrial Tribunal–cum-Labour Court, Lucknow.

2. The case of the workman, Somit Kumar, in brief, is that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. 01.09.2003 to 25.04.2009 continuously when his services have been terminated without any notice. It is submitted by the workman that the opposite party No. 02 has kept opposite party No. 03 to escape from the responsibilities and labour laws though he performed duties of opposite party No. 2 under its directions. He also submitted that he was issued a gate pass by the opposite party No. 03, under directions of the opposite party No. 02, which used to be taken back at the end of the year. The workman has stated that he after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. Accordingly, the workman has prayed for reinstatement with full back wages with continuity in service.

3. The opposite party No. 01 & 02 has disputed the claim of the workman by filing its written statement; wherein it has mentioned that the workman had never been engaged/appointed by the opposite party No. 01 & 02; moreover the railway management entered into an agreement with the opposite party No. 03 for executing the day to day casual work at railway stations; and accordingly, the railway administration is not liable for any claim made by the workman as the railway administration neither engaged the workman nor did it terminate him; and also that it did not make any violation of any labour law or engaged in any kind of unfair labour practice; hence it has been prayed by the opposite party No. 1 & 2 that the claim of the workman be rejected without any relief to him being devoid of merit.

4. The opposite party No. 03 has also disputed the claim of the workman with submission that neither any post of Box Porter was ever vacant nor the opposite party No. 3 ever received work order or Form-V from railway administration nor the workman was ever appointed with the opposite party No. 1, 2 & 3 on the post of Box Porter; hence there is no question of his termination. It has submitted that the workman was never issued any gate pass by the opposite party No. 3 and various benefits such as salary, weekly holiday, Provident Fund and medical facilities are available to the regularly appointed employee who are appointed after adopting due procedure; and the workman is not entitled for the same as there was no violation to the provisions of I.D. Act, 1947. Accordingly, the opposite party No. 03 has prayed that the claim of the workman be rejected.

5. The workman has filed its rejoinder wherein he has denied the counter allegations of the opposite parties reiterating the averments already made in the statement of claim.

6. The opposite party No. 03 did not turn up after filing of its written statement.

7. The workman and opposite party No. 01 & 02 filed photocopies of documents in support of their cases. The workman examined himself; whereas the opposite party No. 01 & 02 examined Shri P. K. Singh, ADME (O&F), Northern Railway, Lucknow in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties and perused entire evidence available on record.

9. The authorized representative of the workman has argued that he was appointed as Box Porter with opposite party No. 02 against the permanent vacant post; and worked accordingly w.e.f. 01.09.2003 to 25.04.2009 continuously when his services have been terminated without any notice or notice pay or assigning any reason thereof in contravention to the provisions of Section 25 F of the I.D. Act, 1947. The learned authorizes representative of the workman has also asserted that the workman after continuous service of 120 days was entitled for temporary status and other service benefits under service Rules. He has relied upon

(i) The Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998.

(ii) Judgment dated 27.01.1999 of Hon'ble Calcutta High Court in Sheikh Jahangir Ali & others vs Calcutta Port Trust & others.

(iii) (2006) 12 SCC 380 District Rehabilitation Officer & others vs Jay Kishore Maity & others.

(iv) (2003)11 SCC 590 A.I. Railway Parcel & Goods Porters' Union vs Union of India & others.

10. In rebuttal, the opposite party No. 01 & 02's representative has contended that the workman is contractor's employee as the opposite party has undergone a contract with the M/s Industrial Security Services for supply of security personnel; and accordingly the workman was one of the security guards provided by M/s Industrial Security Services and the said contractor/agency was duly paid for it, which in turn paid salary to the workman. It has been urged that the management of opposite party No. 01 neither appointed the workman nor terminated his services; rather his employment was regulated by M/s Industrial Security Services and the same came to an end with the end of contract with the agency; hence there was no violation of provisions of the Industrial Disputes Act, 1947. He has relied upon:

(i) 2017 LLR 940, the Secretary, BSNL, Contractor Mazdoor Union & others Vs. The Chief General Manager, BSNL

(II) 2018 LLR 758 Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati

11. I have given my thoughtful consideration to the rival contentions of the parties and perused entire evidence available on file.

12. The workman has come up with a case that he had been appointed by the opposite party No. 2 on the clear vacancy of Box Porter and the management of railways engaged the opposite party No. 3 in order to deprive the workman of his legitimate rights. It has also been contended by the workman that keeping in view the long and continuous service with the opposite party No. 1 & 02 he was entitled for grant of temporary status and other consequential benefits admissible to the employees with temporary status under Railway Establishment Rules; but on the contrary the management of Railways has acted in utter disregard to the norms and has terminated his services without any reason or rhyme or any notice or any notice pay in lieu thereof, which is voilative of the provisions of the Section 25 F of the ID Act, 1947. It is also the case of the workman that keeping in view the pronouncement of the Hon'ble Apex Court regarding regularization/absorption of Box Porters with railway administration, he was also entitled for regularization/absorption into the services of the Railways. The workman has filed photocopy of gate pass/Identity card, purported to be issued by opposite party No. 3.

13. Per contra, the opposite party No.1 & 2 has come forward with a clear cut case that the management of railways neither appointed the workman in any capacity nor there arises any question of his termination or violation of any of the provisions of the Industrial Disputes Act, 1947. It is the case of the management of railways that the management of railways entered into an agreement with M/s Shahid FAizan Ahmed & Brother's for transportation of driver line boxed from Charbagh & Alamnagar station and accordingly, the workman's services were availed by the said contractor/opposite party No. 3 by engaging him; and was paid accordingly. Thus, there was no direct employer-employee relationship between the management of railways and the workman, therefore, the management of railways is not liable to the workman in any way as claimed before this Tribunal. The opposite party No. 01 & 02 has filed photocopy of the contract dated 22.01.2009 entered between the railway administration and the opposite party No. 3.

14. Moreover, the opposite party No. 03 has also rebutted the claim of the workman with submissions that the workman had never been appointed by any of the opposite parties and he was not entitled for any of the benefits as claimed by him as they were admissible to the regularly appointed employees of the railways. It also mentioned that there was no vacancy of the Box Porter nor any such post was advertised by the railways or any recruitment was done in pursuance thereof. However, the opposite party No. 03 did not turn up after filing its written statement. But its absence does not automatically create any legal rights in favour of the petitioner workman.

15. Having gone through the respective pleading of the parties and entire documentary evidence available on record it comes out that the railway administration entered into a contract with the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's to carry out the working according to the specification provided in the contract for a period or two years only; and in consequence thereto; workman had been engaged by the opposite party No. 03 viz. M/s Shahid Faizan Ahmed & Brother's for transportation of Driver line boxes from Charbagh & Alam Nagar station railway platform.

The workman has examined himself in support of his case and during his cross-examination has stated that he had been appointed by the contractor viz. Shahid Faizan & Brothers on 01.09.2003. He admitted that the railway neither appointed nor terminated his services; rather he stated that the Contractor, Shahid Faizan terminated him on 25.04.2009 without any notice. He also admitted that paper No. 13/3 is identity card, issued by the contractor.

On contrary, the management of the railway has examined Sri P. K. Singh, ADME (O&F), who stated in his cross-examination that contractor is being allotted 'work order', which is for a specific time period; however the time period keeps on changing with reference to the condition and this may be for 6 months, some time for 01 year and sometimes it may be for 02 years also, depending on the nature of the work. He stated that Indian Railway does not have direct relation with any Box Porter and the contractor is fully responsible for quality of work. He further stated that the contractor is directly related with the workman and Railways has no role in the appointment of Box Porter by the contractor; nor does the railway issues any identity card to any of the Box Porter engaged by the contractor. The management witness specially stated that since the contract used to be time bound, therefore, on its expiry, the contract is issued again; hence there is no relation with the railways regarding regularization.

16. During course of the oral submissions the learned authorized representative of the workman has stressed over the order of Hon'ble Apex Court's Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and has submitted that the case of the workman is covered with the said order of the Hon'ble Apex Court and since the railway management has given appointment/regularized other box porters in light of above order dated 15.02.2013 of the Hon'ble Supreme Court, therefore the workman is also entitled for regularization accordingly. The learned authorized representative of the management of railway has vehemently opposed the same. Having taken into account the contentions of the rival parties and perusal of the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 and various letters filed by the workman, obtained through Right to Information Act, 2005, it appears that the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 was *in personam* and not *in rem*, therefore, the directions of the Hon'ble Supreme Court shall apply to the workmen who approached the Hon'ble Sureme Court; and since the workman never approached the Hon'ble Supreme Court, therefore, the Judgment and order dated 15.02.2013 of Hon'ble Apex Court in Writ Petition (Civil) No. 433 of 1998 is of no use for him.

Hon'ble Calcutta High Court in *2017 LLR 940, the Secretary, BSNL, Contractor Mazdoor Union & others vs. The Chief General Manager, BSNL* has held that admission of the workmen that they were working under their respective contractor, is sufficient to establish that they were having no employer-employee relationship with BSNL management; hence, the workmen are not entitled to seek any relief from BSNL management. Hon'ble High Court has observed as under:

> ***"The ratio of the Division Bench in the case of the Binoy Bhushan Chakraborty (supra) is that when a workman is engaged by a contractor to carry out some work at any establishment of BSNL, if such workman is retrenched by the contractor while working under him, BSNL cannot be regarded as employer of such workman with the meaning of "employer" as defined in the Industrial Disputes Act nor such workman can be held to be a "workman" under BSNL within the meaning of the said term, as defined under the said Act and such workman cannot claim to be absorbed in the service of BSNL."***

Hon'ble Allahabd High Court in *2018 LLR 758 Civil Aviation Training College, Bamrauli vs Mohan Lal Prajapati* has observed as under:

> ***"Since, prima facie there was no employment of the respondent with the petitioner there could not have been any termination. I am therefore, of the definite opinion that the Labour Court decided the dispute erroneously. It had no jurisdiction to decide the matter. In fact, when the workman was not at all a workman as had been stated by the petitioner and as was also clear from the averment made in paragraph-10 of the counter affidavit the respondent/workman who had been engaged by a contractor had the remedy to file a claim under the Contract Labourer (Regulation and Abolition) Contract Rules, 1971 (hereinafter called the 1971 Rules)"***

17. It is well settled that if a party challenges the legality of order, the burden lies upon him to prove illegality of the order and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman to set out the grounds to challenge the validity of the termination and to prove that the alleged termination by railways. It was the case of the workman that he had been appointed on the post of Box Porter under the opposite party No. 02 and had worked continuously w.e.f. 01.09.2003 to 25.04.2009, when his services have been terminated without any notice by the railways. This claim has been denied by the railway management; therefore, it was for the workman to lead evidence to show that he had in fact worked continuously for the claimed duration before his alleged termination. In *(2002) 3 SCC 25 Range Forest Officer vs S.T. Hadimani* Hon'ble Apex Court has observed as under:

> ***"It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his***

termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, in fact, worked for 240 days or order or record of appointment or engagement for that period was produced by the workman. On this ground alone, the award is liable to be set aside."

18. Analyzing its earlier decisions on the aforesaid point Hon'ble Apex Court has observed in *2006 (108) FLR R.M. Yellatti & Asstt. Executive Engineer* as follow:

"It is clear that the provisions of the evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments we find that this Court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily wages earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus, in most cases, the workman (claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make it clear that mere affidavits or self serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management."

In the present case the workman has come up with a case that he had been appointed on the post of Box Porter under the opposite party No. 02 and thus, worked continuously w.e.f. 01.09.2003 to 25.04.2009, but has not produced any document neither original nor photocopy in support of his pleadings . The burden was on the workman to show by the way of cogent evidence that there was employee-employer relationship; and he actually worked for claimed duration; but he failed to do so as he could not bring this fact on record. In view of denial of the management regarding his claim, the workman has nothing to support his version, except photo copy of the so called identity card, purported to be issued by the opposite party No. 03 i.e. the contractor viz. M/s. Shahid Faizan Ahmed & Brother's. Further, the opposite party No. 03, the contractor has also refuted the claim of the workman regarding his appointment with the railways. Hence, the workman could not establish that there was any employee and employer relationship between him and the opposite party No. 01 & 02 i.e railways.

19. On the other hand the management of the railways has well proved its case by filing copy of the contract with the M/s. Shahid Faizan Ahmed & Brother's for supply of labourers for transportation of Driver line boxes at railway platform.

Mere pleadings are no substitute for proof. Initial burden of establishing the fact of continuous work on the date of alleged termination was on the workman but he failed to discharge the above burden. There is no reliable material for recording findings that the workman had been appointed by the railway administration on the post of Box Porter or he worked continuously with the opposite party No. 01 & 02; and the alleged unjust or illegal order of termination was passed by the management of opposite party No. 01 & 02 or any provisions of the Industrial Disputes Act, 1947 had been violated by them.

20. Thus, in view of the facts and circumstances of the case and discussions made herein above I am of considered opinion that the workman could not be able to prove through cogent evidence that there was a relationship of employee and employer between him and the opposite party No. 01 & 02; rather from the evidence adduced it is established that he was an employee of the contractor viz. M/s. Shahid Faizan Ahmed & Brother's, therefore, the workman can not be granted the relief of reinstatement or any other relief sought by the workman against the opposite party No. 01 & 02.

21. Award as above.

LUCKNOW.

15th October, 2018.

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2018

का.आ. 1639.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, मुख्य पोस्ट मास्टर जनरल, पंजाब सर्किल, चंडीगढ़ और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, चंडीगढ़ के पंचाट (संदर्भ संख्या 17/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.11.2018 को प्राप्त हुआ था।

[सं. एल–40012/21/2011–आईआर (डीयू)]

राजेंद्र जोषी, उप निदेषक

New Delhi, the 13th November, 2018

S.O. 1639.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. 17/2011) of the Central Government Industrial Tribunal-cum-Labour Court-1, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the Chief Post Master General, Punjab Circle, Chandigarh and others and their workman, which was received by the Central Government on 08.11.2018.

[No. L-40012/21/2011– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.I, CHANDIGARH

ID No.17/2011

Shri Surinder Paul
S/o. Chanan Ram,
r/o. Vill & P. Bulandpur, PO Nurpur,
District Jalandhar 144012. …Workman/Claimant

Versus

1. Chief Post Master General,
   Punjab Circle, Chandigarh

2. Asstt.Supdt. of Post Offices (Central),
   O/o. Senior Superintendent of Post Offices,
   Jalandhar Division,
   Jalandhar. … Management

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide letter No. L-40012/21/2011-IR(DU) dated 03.10.2011 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

> 'Whether the action of the management of Senior Supdt. Of Post Office, Punjab Circle/Sr Supdt. of Post Office, Jalandhar Division, Jalandhar, in terminating the services of Shri Surinder Pal, Ex.-EDDA S/o Shri Chanan Ram w.e.f. 5/8/2009 is legal and justified ? What relief the workman is entitled to ?'

2. Both parties were put to notice and the claimant Surinder Paul filed his statement of claim, with the averments that he was enrolled as an Extra Departmental Delivery Agent (EDDA) without issuing any appointment letter on 25/5/1996, by Management No.2 and was ordered to perform duties at Branch Office, "Nussi" attached to Industrial Town, Sub Post Office, Jalandhar and was verbally transferred to Chogitti Sub Post Office in January, 1999 and thereafter he was verbally posted as EDDR at Randhawa Masandan Branch Post Office Industrial Town sub Office,Jalandhar where he remained posted w.e.f. 14/5/2007 to 5/8/2009 continuously and his entire service record was satisfactory. It is pleaded that his salary@ Rs.5500/- per month w.e.f. 1/1/2009 to 5/8/2009 has not been paid and when he had pressed for the same, his services were terminated without issuing any charge sheet or show cause notice or without any departmental proceedings. The workman is still on the rolls of the department but his salary is being drawn @ Rs.Zero per month which is apparent from document Annexure W-1. Though the workman tried to get his personal information under Right to Information Act vide letter dated 23/1/2010 (copy enclosed as Annexure W/2) but the same was declined to him vide letter dated 28/1/2010. Thereafter the claimant got filed through his counsel first appeal and then second appeal under RTI Act before Chief Information Commissioner but to no avail. A demand notice dated 9/6/2010 was sent to the Management and approached the Conciliation Officer but to no avail. The workman has prayed for his reinstatement with full back wages.

3. Management resisted the claim of the workman and filed written statement, taking preliminary objections inter alia that the Department of Post is not an industry and its employees are not the workman under the ID Act and that all service matter are to be dealt with by the Central Administrative Tribunal. While denying the allegation of the workman/claimant about his employment, it has been admitted that the claimant was engaged to work as an outsider GDSBPM at Raipur Rasulpur by Management No.2 against vacant post as stop gap arrangement (adhoc arrangement), due to absence of the regular incumbent and he worked on contract basis only for the period from 14/5/2007 to 14/8/2007; 17/8/07 to 30/9/2007; 3/10/2007 to 29/11/2007; 1/12/2007 to 39/12/2007, 1/1/2008 to 30/1/2008; 1/2/2008 to 28/2/2008;1/3/2008 to 29/3/2008; 1/4/2008 to 28/4/2008; 1/5/2008 to 30/5/2008' 12/6/2008 to 30/7/2008; 1/8/2008 to 30/8/2008;1/9/2008 to 30/10/2008; 1/11/2008 to 29/11/2008; 1/12/2008 to 30/12/2008; 1/1/2008 to 30/1/2009; 2/2/2009 to 28/2/009; 2/3/2009 to 31/3/2009; 1/4/2009 to 19/4/2009, 21/4/2009 to 30/4/2009; 1/5/2009 to 30/5/2009; 1/6/2009 to

29/6/2009; 1/7/2009 to 30/7/2009 and that there is nothing due towards the claimant on account of his salary for any period. It is also alleged that pay slip of the outsider substitute was being drawn/generated inadvertently by the DDO which has now been stopped. It has been pleaded that the available information was supplied to the counsel for the claimant as per orders of Chief Information Commissioner as per Annexure R-1. It is alleged that question of termination of service of the claimant does not arise as he was not the regular employee of the Management. Since he was engaged only in a stop gap arrangement, there was no question of issuing any charge sheet/departmental proceedings. Prayer has been made for dismissal of the claim petition.

4. Perusal of the record shows that the claimant had filed his evidence by way of affidavit and the representative of the Management had refused to cross examine the workman/claimant and as such evidence of the claimant was closed vide order dated 2/2/2015. Thereafter several opportunities were granted to the Management to lead evidence but no evidence has been adduced on behalf of the Management. However, an application u/order IX rule 13 CPC read with Section 151 CPC was moved on behalf of the Management for setting aside the order dated 2/2/2015 and to cross examine the claimant. The said application of the Management was dismissed by this Tribunal vide detailed order dated 24/7/2018.

5. I have heard Shri S.C Gupta, A/R for the workman as none appeared on behalf of the Management. I have also gone through the records carefully.

6. There is no dispute about preposition of law that onus to prove that claimant was in the employment of Management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the Management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a Calendar year. In this regard, reference may be made to *Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.*

7. In the affidavit (now exhibited as Ex.C-1). the claimant has reiterated the averments as made in the claim petition. The claimant has filed on record copy of his salary slip (as Ex.W-1 colly) showing that his salary for the month of August, 2011 was drawn by the Management @ Rs.Zero per month. He has also filed on record copy of his RTI application as Ex.W-2 whereby he had sought certain information from the Management under RTI Act, vis-à-vis the reasons for removing/relieving the claimant Surinderpal, EDDA from official duties w.e.f. 5/8/2009 while posted at Raipur Rasulpur Branch Office, the Management vide its reply (viz. Annexure R-1 filed alongwith the written statement itself) has stated that Shri Baljinder Paul, GDS, MD Kot Kalan BO was given the charge of GDS BPM Raipur Rasulpur against the outsider Shri Surinder Pal in the public interest. Thus it stands proved on record that the claimant was engaged by the Management No. 2 as EDDA and as such was the employee of the Management. Though he workman/claimant has claimed that he performed his duty continuously for about 13 years w.e.f. 25/5/1996 till the date of termination of his services by the Management, however except for his bald statement to this effect he has not filed on record any document to substantiate the same. But the fact remains that the claimant was undisputedly in the employment of the Management, inasmuch as the Management has admitted in its written statement that the claimant was engaged to work as an outsider GDSBPM at Raipur Rasulpur by Management No.2 against vacant post as stop gap arrangement (adhoc arrangement), due to absence of the regular incumbent and there he worked from 14/5/2007 to 30/7/2009 with artificial break of one or two days, as detailed in para 3 above and he had worked for more than 240 days in the calendar year 2008 i.e year. preceding to the date of termination of his services on 5/8/2009. I may mention that even if it is assumed that the claimant herein was working under the Management as stop gap arrangement or on contract basis, as alleged by the Management, in that eventuality also the claimant falls in the definition of "workman" as provided under Section 2(S) of the Act. In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Court 2532* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

> "*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. In these circumstances, it stands proved that there existed relationship of employer-employee between the parties.

8. It is the case of the Management that the question of termination of service of the claimant does not arise as he was not the regular employee of the Management and further that since the claimant was engaged only in a stop gap arrangement, there was no question of issuing any charge sheet/departmental proceedings. Thus, undisputedly the Management has neither issued any notice, nor has paid any compensation in lieu of notice period to the workman/claimant prior to termination of his services. This amounts to violation of the provisions of Section 25-F of the Act.

9. There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

10. Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him, as such action of the Management in terminating the services of the workman is held to be illegal and void.

11. Now the residual question for consideration is whether the claimant is entitled to any incidental relief of payment of back wages and/or reinstatement of service. It is proved on record that claimant was in the employment of the Management before his termination on 5/9/2008. There is no show cause notice or memo issued to the claimant/workman by the Management. Moreover, the job of the workman is/was of perennial and regular nature which fact finds support from reply Annexure R-1 itself and that is why one Baljinder Paul, GDS, MD Kot Kalan Branch was given the charge of GDS Raipur Rasulpur where the claimant was lastly deputed/engaged. During the course of arguments, the claimant was present before this Tribunal and he stated that he is not gainfully employed after his termination. The Management has not adduced any evidence to show that the claimant is gainfully employed somewhere else or that he is in a position to make his both ends meet by doing any work. Even if it is assumed that the claimant is doing some intermittent or adhoc work to make his both ends meet, that would not itself amount to gainful employment. .

12. The Hon'ble Apex Court in case ***"Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya"*** reported as (2013) 10 SCC 324 has held as under :

"The propositions which can be culled out from the aforementioned judgments are :

(i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

(ii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then I has to plead and also lead cogent evidence to prove that the employee/workman wads gainfully employed and was getting wages equal to the wages he/she wads drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments."

13. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (*Anoop Sharma Vs. Executive Engineer, Public Health Division No.1 Panipat* (2010) 5 SCC 497).

14. A Bench of three Judges of the Hon'ble Supreme Court in the case of Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (1979) 2 SCC 80 held that relief of reinstatement with continuity of service can be granted where termination of service is found to be invalid. It would mean that the employer has taken away illegally the right to work of the workman contrary to the relevant law or in breach of contract and simultaneously deprived the workman of his earnings. If thus the act of employer is found to be totally illegal and arbitrary, in that eventuality the workman is required to be reinstated, with full back wages. Plain common sense also dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen alongwith payment of back wages.

15. However, Hon'ble Apex Court in the case **General Manager, Haryana Roadways Vs. Rudan Singh, reported as 2005 SCC (L&S) 716** observed as under :-

"8. There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded. A host of factors like the manner and method of selection and appointment i.e. whether after proper advertisement of the vacancy or inviting applications from the employment exchange, nature of appointment namely, whether ad hoc, short term, daily wage, temporary or permanent in character, any special qualification required for the job and the like should be weighed and balanced in taking a decision regarding award of back wages. ***One of the important factors which has to be taken into consideration is the length of service, which the workman had rendered with the employer. If the workman has rendered a considerable period of service and his services are wrongfully terminated, he may be awarded full or partial back wages keeping in view the fact that at this age and the qualification possessed by him he may not be in a position to get another employment. However,***

where the total length of service rendered by a workman is very small, the award of back wages for the complete period i.e. from the date of termination till the date of the award, which our experience shows is often quite large, would be wholly inappropriate. *A regular service of permanent character cannot be compared to short or intermittent daily wage employment though it may be for 240 days in a calander year."*

16. Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view that the claimant herein is entitled for reinstatement into service on the same post, with 50 per cent back wages, iinasmuch as termination of the claimant/workman is per-se illegal, particularly when the job is of regular and perennial nature and the claimant/workman is not gainfully employed anywhere since after her termination by the Management. Award is passed accordingly.

Date :17.10.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 13 नवम्बर, 2018

का.आ. 1640.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, महाप्रबंधक, दूरसंचार विभाग, अंबाला कैंट और अन्य एवं उनके कर्मचारी के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय–1, चंडीगढ़ के पंचाट (संदर्भ संख्या 180/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 08.11.2018 को प्राप्त हुआ था।

[सं. एल–40012/80/2009–आईआर (डीयू)]

राजेंद्र जोषी, उप निदेषक

New Delhi, the 13th November, 2018

S.O. 1640.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (ID. No. 180/2013) of the Central Government Industrial Tribunal-cum-Labour Court-1, Chandigarh as shown in the Annexure, in the industrial dispute between the employers in relation to the General Manager, Telecom Department, Ambala Cantt and others and their workman, which was received by the Central Government on 08.11.2018.

[No. L-40012/80/2009– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

IN THE COURT OF SHRI AVTAR CHAND DOGRA : PRESIDING OFFICER CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT No.I, CHANDIGARH

ID No. 180/2013

Smt. Taro Devi w/o Shri Chittar Ram,
R/o. Village & PO Ballana,
Tehsil & District Ambala. …Workman/Claimant

Versus

1. Union of India through
Secretary, Ministry of Labour,
Govt. of India, Sharam Shakti Bhawan,
Rafi Marg, New Delhi.

2. The General Manager,
Telecome Department,
Ambala Cantt. … Management

AWARD

This Award shall decide a reference which was made to this Tribunal by the Appropriate Government vide letter No. L-40012/80/2009-IR(DU) dated 07.02.2014 under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947(in short the Act) for adjudication of an industrial dispute, terms of which are as under:

'Whether the action of the management of Telecom Department in terminating the services of Smt. Taro Devi w/o Shri Chittar Ram with effect from 10/9/2008 is legal and justified ? If not what relief is she entitled to and from which date ?'

2. Both parties were put to notice and the claimant Smt. Taro Devi filed her statement of claim, with the averments that she has been working as part time sweeper for the last 12 years in Village Ballana Telephone Exchange and had been performing her duties to the best of her abilities and there was no complaint against her. In the year 2001 Govt. of India issued a policy to convert the services of part time workers (who worked for less than 4 hours) into full time services and she also sent a communication to the Management No.2 and concerned SDE assured her that her name was being sent to the higher authorities for conversion of her services as full time but nothing was done, rather adopting unfair labour practice, the Management converted the services of junior worker namely Dayalo Devi and terminated the services of the workman/claimant illegally and orally on 10/9/2008, without any notice or compensation and in violation of Sectioin 25-F, G and H of the Act. Gram Panchayat Ballana had also verified her services and had issued a verification letter but to no avail. Prayer has been made for reinstatement into service with full back wages and continuity of service.

(2) The claim petition has been resisted by the Management No.2 who filed its reply, alleging that the workman was never engaged in the department of Telecom or BSNL in any capacity nor she worked even for a single day. The workman has not furnished any documentary proof to show her employment excepting the certificate signed by the Sarpanch of Gram Panchayat. As such no legal right of the workman/claimant has been infringed in any manner. It has been denied that there is violation of any provisions of the Act. Prayer has been made for dismissal of the claim petition.

(3) In support of her case the workman appeared in the witness box as wW1 and tendered her evidence by way of affidavit and relied on the documents Ex.WW1/A to Ex.WW1/3. On the other hand, the Management examined one Shri Avtar Singh, SDO (T), Ambala who also tendered his affidavit Ex.MW1/A..

(4) I have heard Shri Tej Pal Dhull, A./R for the workman and Shri Anish Babbar, A./R for the Management and have gone through the records carefully.

(5) At the outset I may mention that the claim made by the workman/claimant herein for reference of dispute was declined by the appropriate Government vide its order dated 5/1/2010, which was assailed by the workman before Hon'ble High Court of Punjab & Haryana vide CWP No. 727/2011. Vide order dated 3/12/2012 Hon'ble High Court was pleased to quash the order dated 5/1/2010 of the appropriate Government and resultantly the instant reference has been made.

(6) There is no dispute about preposition of law that onus to prove that claimant was in the employment of Management is always on the workman/claimant and it is for the workman to adduce evidence to prove factum of his employment with the Management. Such evidence may be in form of receipt of salary or wages for 240 days or record of his/her appointment or engagement for that year to show that he/she has worked with the employer for 240 days or more in a Calendar year. In this regard, reference may be made to *Batala Coop. Sugar Mills Ltd. Vs. Sowaran Singh, (2005) 8 Supreme Court Cases 481 as well as Director Fisheries Terminated Division Vs. Bhikubhai Meghajibhai Gavda (2012) 1 SCC 47.*

(7) In her affidavit Ex.WW1/A the claimant has reiterated her case that she had been working as part time sweeper for the last 12 years in Village Ballana Telephone Exchange of Management No.2. She has filed on record copy of the complaint dated 28/7/2008 (Ex.M.W1/1) addressed to Labour Officer, Ambala City regarding enhancement of her wages and regularization of her services; proceedings of the Conciliation Officer as Ex.WW1/2 and copy of the order dated 3/12/2012 passed by Hon'ble High Court in CWP No. 727 of 2011 as discussed in para 5 above. On the contrary, Shri Avtar Singh, SDO, Ambala in his affidavit Ex.MW1/A has categorically deposed that the claimant was never engaged in the department of Telecom or BSNL at any point of time and the claimant ha not furnished any documentary proof to show her employment with the Management No.2. As such, question of termination of her services does not arise.

(8) It may be noted that in support of her claim that she was working as Part time sweeper in Telephone Exchange, Bhallana District, Ambala, the workman/claimant in her cross examination elaborated that there were 9 rooms which were to be cleared out by her and in those rooms, machines have been installed and even the officials used to visit those rooms. No attendance was ever marked by the department. Initially she was being paid Rs100- and thereafter she was paid Rs.200/- per month. In the proceedings dated 2/9/2008 (Ex.WW1/2) before the Conciliation Officer, one Shri Udham Singh, Incharge Telephone Exchange, Bhallana had stated that the claimant/workman had been working in the Telephone Exchange on contract/part time basis for the last 9 years @ Rs.100/= per month for doing two hours' work daily and that since January, 2008 she was being paid Rs.200/- per month for her job. There were arrears of her wages for the month of June and July, 2008 and the Management was ready to pay the same. Proceedings dated 10/9/2008 of the Conciliation officer shows that the Management was ready to pay Rs.1200/- to the workman towards arrears of her wages @ Rs.200/- per month for the months of March, 2008 to August, 2008 and it was disclosed by the side of the Management that there was no further need of services of the workman and hence, her services were being disengaged. It is also manifest from the order Ex.WW1/3 of the Hon'ble High Court that learned counsel for the Management herein had not disputed the factum of admission made before the Labour cum Conciliation Officer that the claimant had been working with it for the last nine years but she was working on part time contract basis. In the face of documents Ex.WW1/2 and Ex.WW1/3 as discussed above, the plea of the Management that the claimant was never engaged in the department of Telecom or BSNL at any point of time is not tenable rather relationship of employer-employee between the Management and claimant stands proved. Just because the claimant hererin was working under the Management on part time or on contract basis , it would be improper to conclude that she does not fall in the definition of "workman" as provided under Section 2(S) of the Act. . In this regard, reference can be made to the decision in the case of *Devinder Singh Vs. Municipal Council, Sanaur, AIR 2011 Supreme Courtt 2532,* wherein the Hon'ble Apex Court while interpreting the provisions of Section 2(S) of the Act which deals with the definition of "workman" has observed as under :-

"*The source of employment, the quantum of recruitment, the terms & conditions of employment/ contract of service, the quantum of wages/ pay and mode of payment are not at all relevant for deciding whether or not a person is a workman within the meaning of Section 2(s) of the Act. The definition of workman also does not make any distinction between full time and part time employee or a person appointed on contract basis. There is nothing in the plain language of Section 2(s) from which it can be inferred that only person employed on regular basis or a person employed for doing whole time job is a workman and the one employed on temporary, part time or contract basis on fixed wages or as a casual employee or for doing duty for fixed hours is not a workman.*"

It is clear from the perusal of aforesaid observations that even if a person is engaged on temporary, part time or contract basis or for doing any other kind of work and is duly paid wages for the said work, in that eventuality such a person would be covered by the definition of "workman" as provided in Section 2(S) of the Act. In these circumstances, it stands proved that there existed relationship of employer-employee between the parties.

(9) Equally settled is the position of law that when relationship of employer-employee stands proved between the parties, then onus will shift upon the employer/management to show that the claimant has not worked for 240 days or more in a calendar year or that the services of the claimant were terminated in accordance with the provisions of the Act. Except for the bald statement that the claimant did not work for 240 days, the Management has not adduced any documentary evidence to substantiate its claim. However, as mentioned above it has come on record, the workman/claimant had been working with the Management for the last about 9 years though on part time basis, prior to termination of her services on 10/9/2008. It is the case of the Management that the workman was not engaged at any time and as such question of termination her services did not arise. Thus, undisputedly the Management has neither issued any notice, nor has paid any compensation in lieu of notice period to the workman/claimant prior to termination of her services. This amounts to violation of the provisions of Section 25-F of the Act.

(10) There is long line of decisions of Hon'ble Apex Court as well as of various High Courts that provisions of Section 25-F of the Act are mandatory in nature and termination of the workman from services in derogation of the provisions of Section 25-F of the Act will render action of the Management to be illegal and void under the law.

(11) Since there is no evidence on record that any valid notice was issued by the Management to the workman at the time of termination or in lieu of such notice, any compensation was paid to him, as such action of the Management in terminating the services of the workman is held to be illegal and void.

(12) Now the residual question for consideration is whether the claimant is entitled to any incidental relief of payment of back wages and/or reinstatement of service. It is proved on record that claimant was continuously in the employment of the Management for the last about 9 or so before her termination on 10/9/2008. There is no show cause notice or memo issued to the claimant/workman by the Management. Moreover, the job of the workman is of perennial and regular nature which fact is also apparent from the testimony of MW1 Avtar Singh who has stated in his cross examination that now the cleaning work is being done through the contractor who is making payment to the part time Sweepers. During the course of arguments, the claimant was present before this Tribunal and she has stated that she is not gainfully employed after her termination. There is pleading in the claim petition as well as evidence in this respect. The Management has not adduced any evidence to show that the claimant is gainfully employed somewhere else or that she is in a position to make her both ends meet by doing any work. Even if it is assumed that the claimant is doing some intermittent or adhoc work to make her both ends meet, that would not itself amount to gainful employment. But at the same time this Tribunal can not ignore the fact that the claimant was just working with the Management on part time basis. Latest trend itself discernable from the various pronouncements made by the Hon'ble Apex Court is that when a person has been engaged on daily wage basis or for doing temporary kinds of work, in that situation full back wages are not to be awarded. There are number of factors which are required to be considered by the Tribunal while considering the question of reinstatement with back wages. It has been held in the case of Hari Nandan Prasad Vs. Food Corporation of India (2014) 7 Supreme Court cases 190 as under :-

"Relief by way of reinstatement with back wages is not automatic and may be wholly inappropriate in a given fact situation even though the termination of an employee is in contravention of the prescribed procedure. Compensation instead of reinstatement has been held to meet the ends of justice. An order of retrenchment passed in violation of Section 25-F although may be set aside but an award of reinstatement should not, however, automatically passed. The award of reinstatement with full back wages in a case where the workman has completed 240 days of work in a year preceding the date of termination, particularly daily wages has not been found to be proper by the Supreme Court and instead compensation has been awarded. The Supreme Court has distinguished between a daily wager who does not hold a post and a permanent employee. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal, because of non payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation.''

(13) Having regard to the recent judicial trends and duration of service rendered by the claimant, an amount of Rs.1 lakh (Rupees One Lakh) appears to be just and reasonable, and the same is payable to the claimant herein by the Management. In case this compensation amount is not paid within two months from the date of publication of this Award, then the claimant will be entitled to recover the same alongwith interest @ 6% per annum. Award is passed accordingly.

Date : 17.10.2018

AVTAR CHAND DOGRA, Presiding Officer

नई दिल्ली, 14 नवम्बर, 2018

का.आ. 1641.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, केन्द्रीय सांख्यिकी कार्यालय (आईएस विंग), कोलकाता और अन्य के प्रबंधन के संबंध में नियोक्ता एवं उनके कर्मचारी के प्रबंधतंत्र के संबंध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 02/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.10.2018 को प्राप्त हुआ था।

[सं. एल–42025/03/2018–आईआर (डीयू)]

राजेंद्र जोषी, उप निदेषक

New Delhi, the 14th November, 2018

S.O. 1641.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 02/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the employers in relation to the Employers in relation to the Management of Central Statistics Office (IS Wing), Kolkata and others and their workman, which was received by the Central Government on 17.10.2018.

[No. L-42025/03/2018– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Application No. CGIT-02 of 2013

(Under Section 2A of the I.D. Act, 1947)

Parties: Md. Jabir Hossain,
96/H/26, K.C. Road,
Kolkata – 700002 …Applicant

Vs

1. Central Statistics Office (I.S. Wing),
1, Council House Street,
Kolkata – 700001

2. The Director General,
Central Statistics Office (Industrial Statistics Wing),
Ministry of Statistics
Sansad Marg,
New Delhi – 110001. …Opp. Parties

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Applicant : Mr. A. Banerjee, learned counsel.

On behalf of the Opposite Parties : Mr. A. Dutta, learne counsel.

State: West Bengal.

Dated: 11th October, 2018

AWARD

This is an application under Section 2A of the Industrial Disputes Act, 1947 claiming that termination of Applicant workman is unjustified and that he is entitled for reinstatement in service with full back wages and other consequential benefits under the law.

2. Brief facts giving rise to this application are that the Applicant workman, Md. Jabir Hossain came in employment of the Opposite Party, Central Statistics Office (Industrial Statistics Wing), Ministry of Statistics on 29th April, 1999. It is alleged that his name was not incorporated in the permanent muster roll of peon inspite of his continued employment from 1st June, 1999 till the date of alleged termination of service on 1st October, 2012. The applicant workman placed his demand explaining the credibility of the fact to the appropriate authority, but it yielded no effect. Having found no alternative avenue, the workman had to raise an industrial dispute before the office of Assistant Labour Commissioner, Kolkata, but the attitude of the employer was non-compromising and anti labour. One of the workmen, Shri Dipak Samanta was appointed as Peon in 2003 on regular basis, but in case of the applicant workman his service

was not regularized, rather he was allegedly refused employment by way of termination of service with effect from 1st October, 2012. Therefore, this application under Section 2A of the Industrial Disputes Act, 1947 was filed raising the said industrial dispute. From the date of joining service the Applicant workman has been discharging duties to the satisfaction of superiors and the management employers and he maintained good, clean and meritorious record during the tenure of his service. He has further pleaded that his termination is void *ab initio* and inoperative, therefore, he is entitled for reinstatement with full back wages.

3. The Opposite Party, Central Statistics Office of Ministry of Statistics filed its written statement pleading *interallia* that that the application under Section 2A of the Industrial Disputes Act, 1947 is not maintainable as the organization of Opp. Party is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The Opp. Party being a wing of the Ministry of Central Government renders sovereign functions. It is further pleaded that the Applicant was engaged as unskilled labourer from time to time by the department for purely occasional nature of work on the basis of claim vouchers submitted by the Applicant. Therefore, the question of including his name in the pay roll or muster roll of the office does not arise under any circumstances. No mazdoor named Shri Dipak Samanta was even appointed on regular basis. He is not a regular staff of the department; he is one of the contractual staff with contract valid upto 31st March, 2014. The Applicant is not at all entitled to regularization in service or reinstatement in service. The attempt of the applicant workman to approach this Tribunal is stated to be mala fide with sole intention of obtaining a government employment by misleading the Tribunal by some baseless and false story and also bypass a proper mode of fair selection.

4. I have heard the learned counsel of both parties and meticulously perused oral and documentary evidence filed by the parties.

5. Before proceeding to the merit of the case, it is necessary to deal with a preliminary objection raised by the Opp. Parties regarding maintainability of this application on the ground that the Opp. Parties organization is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947.

6. Learned counsel for the Opposite Parties has vehemently argued that the activity of the organization is sovereign activity of government which is not covered by the definition of 'industry' as defined under the Industrial Disputes Act, 1947.

7. Considering the scope and extent of term "industry" Hon'ble the Apex Court in **Bangalore Water Supply** v. **A. Rajappa**, 1978-I-LLJ 349 has laid certain principles for determination whether an establishment is an industry or not. The relevant portion of observation of Hon'ble the Apex Court may reproduced as below:

> *"Where there is; (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element chimerical), and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (non spiritual or religious, but inclusive of material things or services geared to celestial bliss), prima facie there is an industry in the enterprise."*

8. Taking clue from the definition of industry as given by Hon'ble the Apex Court as above, Section 2(j) of the Industrial Disputes Act, 1947 was amended vide Section 2(c) of the Act 46 of 1982 with effect from 21st August, 1984 according to which –

"industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not –

(i) ……

(ii) ……

But does not include –

(1) …….

(2) …….

(3) ……..

(4) ……..

(5) ……

(6) any activity of the Government relatable to sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

…….

…….

9. Thus on the basis of above amended definition of industry, it has been argued by the Opposite Parties that it being a department of Government of India performing sovereign functions, is specifically excluded from the definition of industry.

10. Learned counsel for the Applicant, contrary to above, has submitted that even if the organization is Government Department of Ministry of Statistics and it performs sovereign functions, the same does come within the definition of industry. For his argument learned counsel has relied on **State of West Bengal & Others** v. **N.G. Jana & Others**, 1998-I-LLJ 1116 in which the Hon'ble Calcutta High Court has observed that

> *"14. It is, by now, well-settled that a department of the Government or State or any other authority which is a State under Art. 12 of the Constitution of India can be an industry provided there is:*
>
> *(i) Systematic activity carried on by co-operation between an employer and his employee for the production or distribution of goods or services with a view to satisfy human wants and wishes, not spiritual or religious."*

11. Thus, from above discussion it is clear that Opposite Party organization cannot be excluded from the definition of industry merely because it is a department of Government of India, if systematic activity is being carried by co-operation between employer and its employee for production and distribution of goods or services.

12. Elaborating systematic activity Hon'ble the Apex Court in **Bangalore Water Supply case (supra)** has held that a systematic activity which is organized or arranged in a manner in which the trade or business is generally organized and arranged would be an industry. Thus a government department or organization may be called an industry, if it has trappings of business, trade or calling where systematic activity is being carried on with the help of employee and for production and distribution of goods or services.

13. Now coming to the nature of activity carried on in Central Statistics Office (Industrial Statistics Wing) of Ministry of Statistics, it is undoubtedly a wing of Ministry of Statistics and Programme Implementation responsible for survey methodology, process of data, tabulation of data and preparation of report through field survey needed for improvement of industries. Thus, in view of the nature of activity of the Opposite Party organization, it cannot be said that it has trapping of business or trade or the systematic activity is organized or arranged in a manner in which trade or business is generally organized or arranged.

14. In view of above, it is established that the activity of the Opposite Party organization is sovereign function of the government which is specifically excluded from the definition of term "industry".

15. As the organization of Central Statistics Office is not an industry, the Applicant cannot be said to be a workman within the definition of Section 2(s) of the Industrial Disputes Act, 1947 and consequently no industrial dispute can be said to have arisen.

16. Learned counsel for the Applicant relying on **H.D. Singh** v. **Reserve Bank of India & Others**, 1985 LAB.I.C. 1733 and **Natha Singh** v. **Industrial Tribunal-cum-Labour Court & Others**, 2015 LLR 309 has submitted that striking off the name of the Applicant from the rolls of organization amounts to retrenchment and as provisions of Section 25F of the Industrial Disputes Act, 1947 are not followed, the Applicant is entitled to reinstatement in service. I do not agree with the submissions made by the learned counsel for the Applicant as it has been seen above that Central Statistics Office is not an industry, therefore, no question of retrenchment and compliance of Section 25F of the Industrial Disputes Act, 1947 arises.

17. Resultantly, the application under Section 2A of the Industrial Disputes Act, 1947 is liable to be dismissed. The application is therefore dismissed. Applicant is not entitled to any relief.

Award is passed accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Kolkata,
Dated, the 11th October, 2018.

नई दिल्ली, 14 नवम्बर, 2018

का.आ. 1642.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, केन्द्रीय सांख्यिकी कार्यालय (आईएस विंग), कोलकाता और अन्य के प्रबंधन के संबंध में नियोक्ता एवं उनके कर्मचारी के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 01/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 17.10.2018 को प्राप्त हुआ था।

[सं. एल–42025/03/2018–आईआर (डीयू)]

राजेंद्र जोषी, उप निदेषक

New Delhi, the 14th November, 2018

S.O. 1642.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 01/2013) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the employers in relation to the Employers in

relation to the Management of Central Statistics Office (IS Wing), Kolkata and others and their workman, which was received by the Central Government on 17.10.2018.

[No. L-42025/03/2018– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Application No. CGIT-01 of 2013

(Under Section 2A of the I.D. Act, 1947)

Parties : Shri Ratan Naskar,
3/H/17, Tarani Charan Ghosh Lane,
Kolkata – 700002 …Applicant

Vs

1. Central Statistics Office (I.S. Wing),
1, Council House Street,
Kolkata – 700001

2. The Director General,
Central Statistics Office (Industrial Statistics Wing),
Ministry of Statistics
Sansad Marg,
New Delhi – 110001. …Opp. Parties

Present : Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Applicant : Mr. A. Banerjee, learned counsel.

On behalf of the Opposite Parties : Mr. A. Dutta, learne counsel.

State: West Bengal.

Dated: 10th October, 2018.

AWARD

This is an application under Section 2A of the Industrial Disputes Act, 1947 claiming that termination of Applicant workman is unjustified and that he is entitled for reinstatement in service with full back wages and other consequential benefits under the law.

2. Brief facts giving rise to this application are that the Applicant workman, Shri Ratan Naskar came in employment of the Opposite Party, Central Statistics Office (Industrial Statistics Wing), Ministry of Statistics on 29th April, 1999. It is alleged that his name was not incorporated in the permanent muster roll of peon inspite of his continued employment from 1st June, 1999 till the date of alleged termination of service on 1st October, 2012. The applicant workman placed his demand explaining the credibility of the fact to the appropriate authority, but it yielded no effect. Having found no alternative avenue, the workman had to raise an industrial dispute before the office of Assistant Labour Commissioner, Kolkata, but the attitude of the employer was non-compromising and anti labour. One of the workmen, Shri Dipak Samanta was appointed as Peon in 2003 on regular basis, but in case of the applicant workman his service was not regularized, rather he was allegedly refused employment by way of termination of service with effect from 1st October, 2012. Therefore, this application under Section 2A of the Industrial Disputes Act, 1947 was filed raising the said industrial dispute. From the date of joining service the Applicant workman has been discharging duties to the satisfaction of superiors and the management employers and he maintained good, clean and meritorious record during the tenure of his service. He has further pleaded that his termination is void *ab initio* and inoperative, therefore, he is entitled for reinstatement with full back wages.

3. The Opposite Party, Central Statistics Office of Ministry of Statistics filed its written statement pleading *interallia* that that the application under Section 2A of the Industrial Disputes Act, 1947 is not maintainable as the organization of Opp. Party is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. The Opp. Party being a wing of the Ministry of Central Government renders sovereign functions. It is further pleaded that the Applicant was engaged as unskilled labourer from time to time by the department for purely occasional nature of work on the basis of claim vouchers submitted by the Applicant. Therefore, the question of including his name in the pay roll or muster roll of the office does not arise under any circumstances. No mazdoor named Shri Dipak Samanta was even appointed on regular basis. He is not a regular staff of the department; he is one of the contractual staff with contract valid upto 31st March, 2014. The Applicant is not at all entitled to regularization in service or reinstatement in service. The attempt of the applicant workman to approach this Tribunal is stated to be mala fide with sole intention of obtaining

a government employment by misleading the Tribunal by some baseless and false story and also bypass a proper mode of fair selection.

4. I have heard the learned counsel of both parties and meticulously perused oral and documentary evidence filed by the parties.

5. Before proceeding to the merit of the case, it is necessary to deal with a preliminary objection raised by the Opp. Parties regarding maintainability of this application on the ground that the Opp. Parties organization is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947.

6. Learned counsel for the Opposite Parties has vehemently argued that the activity of the organization is sovereign activity of government which is not covered by the definition of 'industry' as defined under the Industrial Disputes Act, 1947.

7. Considering the scope and extent of term "Industry" Hon'ble the Apex Court in **Bangalore Water Supply** v. **A. Rajappa**, 1978-I-LLJ 349 has laid certain principles for determination whether an establishment is an industry or not. The relevant portion of observation of Hon'ble the Apex Court may reproduced as below:

> *"Where there is; (i) systematic activity, (ii) organized by cooperation between employer and employee (the direct and substantial element chimerical), and (iii) for the production and/or distribution of goods and services calculated to satisfy human wants and wishes (non spiritual or religious, but inclusive of material things or services geared to celestial bliss), prima facie there is an industry in the enterprise."*

8. Taking clue from the definition of Industry as given by Hon'ble the Apex Court as above, Section 2(j) of the Industrial Disputes Act, 1947 was amended vide Section 2(c) of the Act 46 of 1982 with effect from 21st August, 1984 according to which –

"Industry" means any systematic activity carried on by co-operation between an employer and his workmen (whether such workmen are employed by such employer directly or by or through any agency, including a contractor) for the production, supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes which are merely spiritual or religious in nature), whether or not –

(i) ……

(ii) ……

But does not include –

(1) …….

(2) …….

(3) ……..

(4) ……..

(5) ……

(6) any activity of the Government relatable to sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space; or

…….

…….

9. Thus on the basis of above amended definition of industry, it has been argued by the Opposite Parties that it being a department of Government of India performing sovereign functions,is specifically excluded from the definition of industry.

10. Learned counsel for the Applicant, contrary to above, has submitted that even if the organization is Government Department of Ministry of Statistics and it performs sovereign functions, the same does come within the definition of industry. For his argument learned counsel has relied on **State of West Bengal & Others** v. **N.G. Jana & Others**, 1998-I-LLJ 1116 in which the Hon'ble Calcutta HighCourt has observed that

> *"14. It is, by now, well-settled that a department of the Government or State or any other authority which is a State under Art. 12 of the Constitution of India can be an industry provided there is:*
>
> *(ii) Systematic activity carried on by co-operation between an employer and his employee for the production or distribution of goods or services with a view to satisfy human wants and wishes, not spiritual or religious."*

11. Thus, from above discussion it is clear that Opposite Party organization cannot be excluded from the definition of industry merely because it is a department of Government of India, if systematic activity is being carried by co-operation between employer and its employee for production and distribution of goods or services.

12. Elaborating systematic activity Hon'ble the Apex Court in **Bangalore Water Supply case (supra)** has held that a systematic activity which is organized or arranged in a manner in which the trade or business is generally organized and arranged would be an industry. Thus a government department or organization may be called an industry, if it has trappings of business, trade or calling where systematic activity is being carried on with the help of employee and for production and distribution of goods or services.

13. Now coming to the nature of activity carried on in Central Statistics Office (Industrial Statistics Wing) of Ministry of Statistics, it is undoubtedly a wing of Ministry of Statistics and Programme Implementation responsible for survey methodology, process of data, tabulation of data and preparation of report through field survey needed for improvement of industries. Thus, in view of the nature of activity of the Opposite Party organization, it cannot be said that it has trapping of business or trade or the systematic activity is organized or arranged in a manner in which trade or business is generally organized or arranged.

14. In view of above, it is established that the activity of the Opposite Party organization is sovereign function of the government which is specifically excluded from the definition of term "Industry".

15. As the organization of Central Statistics Office is not an industry, the Applicant cannot be said to be a workman within the definition of Section 2(s) of the Industrial Disputes Act, 1947 and consequently no industrial dispute can be said to have arisen.

16. Learned counsel for the Applicant relying on **H.D. Singh** v. **Reserve Bank of India & Others**, 1985 LAB.I.C. 1733 and **Natha Singh** v. **Industrial Tribunal-cum-Labour Court & Others**, 2015 LLR 309 has submitted that striking off the name of the Applicant from the rolls of organization amounts to retrenchment and as provisions of Section 25F of the Industrial Disputes Act, 1947 are not followed, the Applicant is entitled to reinstatement in service. I do not agree with the submissions made by the learned counsel for the Applicant as it has been seen above that Central Statistics Office is not an industry, therefore, no question of retrenchment and compliance of Section 25F of the Industrial Disputes Act, 1947 arises.

17. Resultantly, the application under Section 2A of the Industrial Disputes Act, 1947 is liable to be dismissed. The application is therefore dismissed. Applicant is not entitled to any relief.

Award is passed accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Kolkata,
Dated, the 10th October, 2018.

नई दिल्ली, 14 नवम्बर, 2018

का.आ. 1643.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार, होटल प्रबंधन कैटरिंग प्रौद्योगिकी संस्थान के प्रबंधन के संबंध में नियोक्ता एवं उनके कर्मचारी के प्रबंधतंत्र के संबंद्ध नियोजकों और उनके कर्मकारों के बीच अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, कोलकाता के पंचाट (संदर्भ संख्या 38/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 12.11.2018 को प्राप्त हुआ था।

[सं. एल—42011/24/2014—आईआर (डीयू)]

राजेंद्र जोषी, उप निदेषक

New Delhi, the 14th November, 2018

S.O. 1643.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 38/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Kolkata as shown in the Annexure, in the industrial dispute between the employers in relation to the Employers in relation to the Management of Institute of Hotel Management Catering Technology and others and their workmen, which was received by the Central Government on 12.11.2018.

[No. L-42011/24/2014– IR(DU)]

RAJENDRA JOSHI, Dy. Director

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL AT KOLKATA

Reference No. 38 of 2014

Parties: Employers in relation to the management of Institute of Hotel Management Catering Technology

AND

Their workmen

Present: Justice Ravindra Nath Mishra, Presiding Officer

Appearance:

On behalf of the Management : Mr. P.K. Chatterjee, Ld. Counsel

On behalf of the Workmen : Mrs. M. Saha, Ld. Counsel

Dated: 26th October, 2018. Industry: Hotel Management

AWARD

By Order No.L-42011/24/2014-IR(DU) dated 21.04.2014 the Government of India, Ministry of Labour in exercise of its powers under Section 10(1)(d) and (2A) of the Industrial Disputes Act, 1947 referred the following dispute to this Tribunal for adjudication:

> *"Whether the management of Institute of Hotel Management Catering Technology & Applied Nutrition for denying the charter of demands which includes 'Agreed Wages' at par with Central Govt. Minimum Wages is legaland/or justified? If not, what relief the concerned workers are entitled to?"*

2. After reference of dispute to this Tribunal the union filed statement of claim stating therein that the Applicant union is contractors' workers union working under different contractors engaged by the principal employer, i.e., Institute of Hotel Management Catering Technology and Applied Nutrition (hereinafter to be referred as institute), which is a Central Government institute and an autonomous body functioning under the Ministry of Tourism, Government of India. The institute has engaged unskilled, semiskilled and skilled workers from time to time since past 10 years. The workers were being paid minimum wages as per State Government rate since 2009. The union has been persistently making representation to the different authorities including Joint Secretary, Department of Finance, Chairman of board of governors, IHM, Kolkata, Regional Director, Indian Tourism, Govt. of India, Minister in charge, Dept. of Labour and the Directorate of Technical Education and Training to enhance the minimum wages as amended by the Ministry of Labour & Employment, Govt. of India from time to time since 14th February, 2012. Since the institute is an autonomous body aided by the Central Govt. the workers should be paid wages according to the Central Govt. revised wages as amended by the Ministry of Labour & Employment vide notification dated 18th September, 2012. The minimum rates of wages including basic rate and variable dearness allowance for different categories of workers to be paid with effect from 1st April, 2014. The union forwarded the charter of demand to the Chairman of the institute and all the directors for getting the statutory benefits including minimum wages as per notification of the Labour Ministry, VDA, house rent allowances, EPF coverage, ESI coverage, Gratuity, uniform, bonus, leave and holidays, night allowance and other statutory benefits not covered by charter of demand. However, the concerned authorities, including principal employer failed to accept the above charter of demand and the principal employer made attempts to deploy new contractors and workmen in place of the existing contractors and workmen, including the applicants in a phased manner in order to frustrate the movement initiated by them to get minimum wages. The failure on the part of principal employer resulted in raising of dispute and reference under Section 10 of the Industrial Disputes Act, 1947 as above.

3. In reply to the statement of claim the management of the institute filed its written statement stating *inter alia* that the institute is a body registered under the Society Registration Act, 1860 constituted by the board of Governors having equal participation of the Central and State Government. Society is regulated by the board of governors under the guidance of Ministry of Tourism, Government of India. The recommendations or guidelines of the Ministry of Tourism, Govt. of India are mere directory and not mandatory. The decisions of board of governors are final and binding on the society in every respect. The members of the Institute of Hotel Management Contractors' Workers union are not employees of the institute. Contractors are paid a consolidated contractual amount by the institute for each deployment of man by them at the premises of the institute. It is clearly indicated that the men deployed by the contractors at the premises of the institute shall not claim any employment. No aid is given by the Central Government to the institute for any recurring expenses. However, aid is given by the Central Government only in respect of capital expenditure. Being

an autonomous body recurring expenses of the institute has to be managed from the income of the institute. The workers engaged and employed by the institute are not entitled to wages revised by the Govt. of India, Ministry of Labour & Employment vide notification dated 18th September, 2012. Application of pay scale and dearness allowance is subject matter of decision to be taken by the board of governors from time to time and as such their decision is final and binding. The members of the claimants not being employees of the Central Government cannot take advantage of the notification. It is further stated that the statement of claim is misconceived, baseless, false and moved with a mala fide intention to mislead, therefore, the same be dismissed with exemplary cost.

4. The union in its rejoinder reiterated its averments made in the statement of claim and has pleaded that information published in the website including brochure of the institute emphatically prove the fact that the institute is autonomous body functioning under the Ministry of Tourism, Govt. of India. The institute is presently affiliated to the National Council for Hotel Management and Catering Technology, New Delhi. The composition of board of governors also proves the fact that it comprised of 10 members, out of which 8 members are appointed by the Government of India. The union denied the averments made in the written statement of the management regarding equal participation of Central and State Government and further pleaded that the contractor is responsible for payment of wages to the workers employed by him in presence of the authorized representative of the principal employer and in case contractor fails to make payment of wages within the prescribed limit, the principal employer will be liable to make payment of wages in full or unpaid balance.

5. In order to substantiate their respective claims, the union has examined WW-01, Shri Biswa Bhusan Das, WW-02, Shri Sanjay Kumar Maji and WW-03, Shri Rajib Maji and the management MW-01, Shri Asish Mitra. Apart from above witnesses, union has also filed examination-in-chief of Shri Gopal Pandit and Shri Suresh Dhanuk, but they were not produced by the union for cross-examination by the institute. Some documentary evidence have also been filed on behalf of both the parties which shall be referred and discussed at appropriate place.

6. I have heard the learned counsel for both the parties. Learned counsel for the union has contended that the institute is a Central Government body in as much as it is funded by the Central Government. Therefore, all the notifications pertaining to minimum wages are applicable to the institute. She has also contended that though the members of the union are employees of contractor, the institute being principal employer is liable for payment of wages in case of default by the contractor. Learned counsel for the institute has vehemently denied the Central Government status of the institute as no fund was ever given by the Central Government for recurring expenses of the institute. He has submitted that the institute is an autonomous body registered under the Society Registration Act, 1860 governed by the board of governors.

7. The issue under consideration in this case is chiefly whether the notification issued by the Central Government with regard to fixation of minimum wages apply in case of the institute or in other words whether Central Government is "appropriate government" responsible for fixation of minimum wages under the Minimum wages Act, 1948 with regard to the institute?

8. Appropriate government responsible for fixation or revision of minimum wages has been defined under Section 2(b) of the Minimum Wages Act, 1948 (hereinafter referred as the Act of 1948) which reads as below:

"2(b) Appropriate Government means –

(i) In relation to any scheduled employment carried on by or under the authority of the Central Government or a railway administration, or in relation to a mine, oil-field or major port, or any corporation established by a Central Act, the Central Government; and

(ii) In relation to any other scheduled employment, the State Government;"

9. From the perusal of above definition of Appropriate Government it appears that the Central Government is the Appropriate Government only where scheduled employment is carried on by or under the authority of the Central Government. Admittedly, the institute is not being carried on by the Central Government. Now the question is whether the institute can be said to be carried on under the authority of the Central Government. An institute can be said to be carried on under the authority of the government only when the government controls its management and business affairs. There is also no relationship of principal and agent between the institute and the government. Learned counsel for the union has submitted that the affairs of the institute re controlled by the board of governors comprised of 11 members, out of which 4 members are representative of the Central Government, 3 are representatives of State Government and others nominated by the Central Government or State Government. Thus it is contended that the predominant character of board of governors is of Central Government, therefore, the institute should be treated as a Central Government body. It is also contended that the institute is aided by the Central Government which is sufficient to characterize the institute as a Central Government body. I do not agree with the submission made by the learned counsel for the union. There is no record to show that the institute is funded by the Central Government. It is in the averments in the written statement and evidence of MW-01, Shri Ashis Mitra that no aid is given by the Central Government towards recurring expenses of the

institute. The fund was received only for infrastructure development. The above factors are not sufficient to decide the status of the institute as a Central Government body.

10. Learned counsel for the union has also laid emphasis on the brochure issued by the institute in which institute of Hotel Management Catering Technology and Applied Nutrition, Kolkata has been shown among the list of Central Government IHMs alongwith other 21 institutes, but this brochure is not sufficient evidence to decide that the institute is being carried on under the authority of the Central Government. No doubt the institute is shown as an autonomous body under the Ministry of Tourism, Government of India, but at the same time it is pleaded that the institute is not bound by the instructions and guidelines of the Ministry of Tourism, Government of India and they are only directory for regulation of courses to be run in the institute.

11. Learned counsel for the union has also submitted that the information manual Ext. W-01 as enclosed with the affidavit of Shri Rajib Maji shows that the salary and allowances of the employees of the institute are those prescribed by the Ministry of Tourism, Government of India and the Ministry of Finance from time to time for Central Government employees of different categories. She has also submitted that grant in aid is provided by the Department of Tourism, Government of India and therefore, the institute shall be deemed to be a Central Government body. I do not find any force in the submission of the learned counsel for the union as it is nowhere provided in the manual that salary and allowances of the employees of the institute are fixed by the Government of India. It only provides that employees shall get salary and allowances at par with the Central Government employees, subject to approval of the board of governors. The words "subject to approval of the board of governors" itself shows the board of governors of the institute is the final body in respect of affairs of the institute. There is also difference between aid and any grant in aid. Grant is given by the Central Government for a particular purpose whereas aid is regular fund given to the institute so far as the recurring expenses of the institute are concerned. The manual very clearly shows that the institute is self-supported in terms of recurring expenditure.

12. It has further been submitted by the learned counsel for the union that skilled, unskilled and semiskilled workers engaged by IHM, Srinagar (J & K) are being given minimum wages as per notification of Ministry of Labour & Employment, Government of India. But, I have yet to find any documentary evidence to support the argument of the learned counsel for the union. The documents relied upon by her is Ext. W-06 which is merely comparative statement of financial bids of house keeping after completion of technical bid which does not substantiate the above argument. Contrary to it the witness MW-01 has filed a copy of email sent by the incharge principal, IHM, Srinagar from which it is established that skilled, semiskilled and unskilled workers are being given minimum wages as fixed by J & K State Labour & Employment Department. In view of above, it is difficult to hold that the institute is under the authority of the Central Government.

13. Apart from this, in order to hold the Central Government is appropriate government for fixation and revision of wages under the Act of 1948, it is necessary that the employment should a "scheduled employment". The word scheduled employment has been defined in Section 2(g) of the Act of 1948 to mean an employment specified in schedule or any process or branch of work forming part of such employment. I have no hesitation to hold that the business which the institute is carrying out is not included in the schedule. Therefore, it cannot be held to be a scheduled employment in respect of which Central Government is appropriate agency for fixation of minimum wages.

14. Where the affairs of the institute is not being carried on under the authority of the Central Government and the employment is not a scheduled employment, I come to the conclusion that the Central Government is not the appropriate authority empowered to fix minimum wages for the employees of the institute. Therefore, notifications issued by the Central Government do not apply in relation to the institute.

15. Learned counsel for the union has further submitted that since management witness, Shri Asish Mitra the Administrative Officer of the institute has accepted the status of the institute as primary employer, they pay wages through contractor, it is liability of the institute to pay minimum wages as claimed. It is pertinent to note here that the union in its statement of claim has admitted that the workers have been employed by different contractors appointed by the institute. Subsequently, WW-01, Shri Biswa Bhusan Das has admitted in his cross-examination that he is not a Central Government employee, but working under a contractor. He has worked under contractors Bengal Protective Guards, JSKS and NSIB. Similarly, WW-02, Shri Sanjay Maji has also admitted in his cross-examination that he has been working under contractors, namely, Bengal Protective Guards, JSKS and NSIB. However, he has claimed that he is getting salary from the principal employer through the contractor. He has also admitted that he is getting salary from the contractor. From their statement it is clear that they are not engaged by the institute, but they have been engaged by the contractor. It is also established from record that the institute has entered into a contract with the concerned contractor for execution of security services for the institute. Copy of contract has been filed by the management as well as by the union wherein it has been specifically mentioned that all the persons engaged by the contractor as Security Guards and Supervisor shall be on contractor's pay roll and shall be paid by him only, the institute will have no liability whatsoever in this regard. It is also mentioned that nothing under the contract shall confer any right or lien on the personnel of the

contractor to claim any direct employment under the institute or to be treated at any time as employee of the institute. In paragraph 13 of the contract it is further provided that there is no employer - employee, master – servant or principal – agent relationship between the institute and the contractor and for the contractor's employees in any manner whatsoever and the contractor has to render services to the institute as n independent contractor. It is not the case of the union that the contract entered into between the institute and contractor is sham, instead the union admits that the institute has engaged a contractor who renders security services through its Security Guards and Security Supervisor. MW-01, Shri Asish Mitra has also stated that the institute does not directly bear any responsibility towards the contractor's workers. The contract amount include amount of ESI contribution, Provident Fund contribution, bonus and the contractor on his turn pays the same to his workers. It is also evident from the terms of contract. Thus, from the terms of contract and evidence given by the union, it is apparent that the contract cannot be termed as sham contract. Apart from this, to adjudicate on the relationship of institute and contractor's workers would also be outside the reference of this case. The terms of reference are only with regard to the denial by the institute the charter of demands which includes agreed wages at par with the Central Government minimum wages.

16. The argument of the learned counsel for the union that the institute being principal employer is liable to pay minimum wages in case of default of contractor also does not help her in application of Central Government notification in case of employees of the contractor as in view of Section 21 of Contract Labour (Regulation and Abolition) Act, 1970 primary liability to pay minimum wages lies on the contractor. Only in case of failure on the part of the contractor, the institute can be made liable to pay the wages and that too, as per state government notifications, as seen above. Moreover, there is no averment in the pleading of the union that the contractor is not paying minimum wages. Hence there is no question to make the institute liable for payment of minimum wages.

16. In these circumstances, this Tribunal comes to the conclusion that the contractor's workers are not entitled for minimum wages at par with the Central Government minimum wages and the management of the institute was justified in denying the same. The question referred by the Government of India to this Tribunal is answered in affirmative.

Award is passed accordingly.

JUSTICE RAVINDRA NATH MISHRA, Presiding Officer

Kolkata,

Dated, the 26th October, 2018

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